102

Supreme Court, U.S.
FILED

08-238 AUG 21 2008

OFFICE OF THE CLERK

(1)

No. _____

In the
Supreme Court of the United States

ROBERT N. POINDEXTER, MIRL W. WHITAKER, MAURICE S. HARDY, VIRGINIA T. MCCULLEY, ROGER O. MEREDITH, ORVILLE DAVIS, CATHERINE JOSEPHSON, MARGARET GONET and MARY LOU DICKENS,

Petitioners,

v.

STATE OF ILLINOIS, acting through the ILLINOIS DEPARTMENT OF HUMAN SERVICES and CAROL ADAMS, its Director, and THE ILLINOIS DEPARTMENT OF PUBLIC AID, n/k/a THE ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES and BARRY S. MARAM, its Director,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

DUANE D. YOUNG
Counsel of Record
DAWN D. BEHNKE
LABARRE, YOUNG & BEHNKE
1300 SOUTH EIGHTH STREET, SUITE TWO
SPRINGFIELD, ILLINOIS 62703
TELEPHONE: (217) 544-8500
FACSIMILE: (217) 544-6200

Attorneys for Petitioners

August 21, 2008

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED FOR REVIEW

At issue is the interpretation of the income protection rules of the spousal impoverishment provisions of the Medicare Catastrophic Coverage Act, 42 U.S.C. Section 1396r—5(b)(1). The Act provides for special treatment for the income and resources of married couples when one is institutionalized and the other spouse remains in the community. The Illinois Supreme Court interpreted the Act as applying only to eligibility determinations for medical assistance for the institutionalized spouse, and found the Act silent as to any prohibition against the state seeking reimbursement for medical expenditures through its spousal support law. The question presented is:

> Whether the Medicare Catastrophic Coverage Act, 42 U.S.C. 1396r—5, and in particular Section (b)(1) thereof, prohibits states participating in the Medicaid program from imposing spousal support obligations after Medicaid eligibility is established, i.e. whether the Illinois Supreme Court erred in construing applicable federal law by holding that the Act did not preempt Illinois spousal support law post-eligibility?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

There are no parties to the proceedings other than those listed in the caption. Virginia McCulley died after the decision sought to be appealed was entered by the Illinois Supreme Court; the personal representative of her estate has been substituted in her stead. (App. 63a)

There are no disclosures required by Supreme Court Rule 29.6.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

INTRODUCTORY PRAYER 1

OPINIONS BELOW 1

JURISDICTION 1

STATUTE INVOLVED 2

STATEMENT OF THE CASE 2

A. Background and History 2

B. The trial court decision. 3

C. Illinois Appellate Court – Fourth District. . 5

D. Illinois Supreme Court decision. 6

REASONS FOR GRANTING THE WRIT 8

A. The Rule of Section (b)(1) is plain, express and unmistakeable. 9

B. Only "spousal refusal" cases give rise to lawful claims for spousal support under the MCCA. 19

C. Eligibility for medical assistance is monthly and the claim that the prohibition of 42 USC 1396r—5(a) applies only to eligibility is erroneous. 21

CONCLUSION 23

APPENDIX

Appendix A: Supreme Court of Illinois Opinion, April 3, 2008 . . . . . 1a

Appendix B: Appellate Court of Illinois Opinion Modified Upon Rehearing, May 17, 2007 . . . 28a

Appendix C: Circuit Court Memorandum Decision and Judgment, May 3, 2005 . . . . . 55a

Appendix D: Supreme Court of Illinois Denial of Rehearing, May 27, 2008 . . . . . 62a

Appendix E: Supreme Court of Illinois Order, July 3, 2008 . . . . . 63a

TABLE OF AUTHORITIES

CASES

Allis-Chalmers Corp. v. Lueck,
471 U.S. 202, 105 S.Ct. 1904,
85 L.Ed.2d 206 (1985) 9

Com'r of Dept. of Social Services of N.Y. v. Spellman,
173 Misc.2d, 979,
661 N.Y.S.2d 895 (1997) 20, 21

Gade v. National Solid Wastes Management Ass'n,
505 U.S. 88, 112 S.Ct. 2374,
120 L.Ed.2d 73 (1992) 9

James ex rel. James v. Richman,
465 F. Supp. 2d 395 (M.D. Pa. 2006) 18

Mertz v. Houstoun,
155 F. Supp. 2d 415 (E.D. Pa. 2001) 18

Morenz v. Wilson-Coker,
321 F. Supp. 2d 398 (2004), *aff'd*
Morenz v. Wilson-Coker,
415 F.3d 230 (2005) 20, 21

Negonsott v. Samuels,
507 U.S. 99, 113 S.Ct. 1119,
122 L.Ed.2d 457 (1993) 9

Pilot Life Ins. Co. v. Dedeaux,
481 U.S. 41, 107 S.Ct. 1549,
95 L.Ed.2d 39 (1987) 9

Schweiker v. Gray Panthers,
453 U.S. 34, 101 S.Ct. 2633,
69 L.Ed.2d 460 (1981) 6, 11, 14, 15

Wisconsin Department of Health and Family Services v. Blumer,
534 U.S. 473, 122 S.Ct. 962,
151 L.Ed.2d 935 (2002) ..... *passim*

CONSTITUTION

U.S. Const. art. VI, cl. 2 9

STATUTES

28 U.S.C. § 1257(a) 1
42 U.S.C. § 1396, *et seq.* 2, 11
42 U.S.C. § 1396a(a)(17) 10, 19
42 U.S.C. § 1396f 5
42 U.S.C. § 1396r—5 ..... 2, 4, 8
42 U.S.C. § 1396r—5(a) 10, 21
42 U.S.C. § 1396r—5(a)(1) 8
42 U.S.C. § 1396r—5(b) and (d) 19
42 U.S.C. § 1396r—5(b)(1) 4, 10, 14, 15, 18
42 U.S.C. § 1396r—5(c) 16
42 U.S.C. § 1396r—5(c)(2) and (3) 20
42 U.S.C. § 1396r—5(d)(3) 15
42 U.S.C. § 1396r—5(d)(3)(A)-(B) 16
42 U.S.C. § 1396r—5(e)(2)(B) 16
42 U.S.C. § 1396r—5(f) 19, 21
89 Ill. Adm. Code 120.61 21
89 Ill. Admin.Code 120.103 3
305 ILCS 5/10 3

RULES

Sup. Ct. R. 13.1 and 13.3 1

OTHER

Don't Want To Pay For Your Institutionalized Spouse? The Rule of Spousal Refusal and Medicaid in Funding Long-Term Care, Andrew D. Wone, Vol. 14., No. 2 The Elder Law Journal (Univ. of Ill. College of Law) 21

INTRODUCTORY PRAYER

The Petitioners respectfully request that their Petition be granted and a writ of *certiorari* issue to the Illinois Supreme Court to review its judgment and opinion entered in this case on April 3, 2008.

OPINIONS BELOW

The judgment and opinion of the Circuit Court of Sangamon County, Illinois, entered May 3, 2005 is included in the appendix at 55a (that decision is not a published decision). The judgment and opinion of the Illinois Appellate Court for the Fourth District, as modified upon denial of rehearing entered December 12, 2006, is reported at 372 Ill.App.3d. 1021, 869 N.E.2d. 39, 2007 Ill.App.LEXIS 562, 311 Ill.Dec. 465. and is included in the Appendix at 28a. The judgment and opinion of the Illinois Supreme Court filed April 3, 2008, is reported as 2008 Ill.LEXIS 307 and has been included in the appendix at 1a.

JURISDICTION

The judgment and opinion of the Illinois Supreme Court was entered on April 3, 2008. A timely Petition for Rehearing was denied on May 27, 2008 (App. 62a). This Petition is timely filed according to Supreme Court Rules 13.1 and 13.3. The Court derives jurisdiction from 28 U.S.C. § 1257(a).

STATUTE INVOLVED

United States Code, Title 42:

> Section 1396 r—5(b)(1) RULES FOR TREATMENT OF INCOME--During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse. 42 U.S.C Section 1396r—5(b)(1).

STATEMENT OF THE CASE

A. Background and History

The facts are not in dispute. Each of the plaintiffs is the "at home" spouse of a recipient of medical assistance for nursing home care under the Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. Section 1396, *et seq*. The "at home" spouse is referred to as a "community spouse," because he or she continues to reside in the community; the spouse in the nursing home is referred to as the "institutionalized spouse." After each of the petitioners' spouses became eligible for medical assistance under Medicaid, the State of Illinois sought to recover a portion of the income of the petitioners for the support of his or her institutionalized spouse's care. The plaintiffs filed this action for declaratory and injunctive relief claiming that Section (b)(1) of the Medicaid Catastrophic Coverage Act (42 U.S.C. § 1396r—5) (the "MCCA") prohibits the collection of spousal support from a community spouse during any month the spouse is in the institution. Specifically the

Plaintiff's claimed that the MCCA preempted contrary state law providing for post-eligibility spousal support. The trial court agreed with the plaintiffs and held that the MCCA prohibited the State from seeking support from community spouses of institutionalized spouses during any month the spouse is in the institution.

The two state agency defendants, the Illinois Department of Human Services and the Illinois Department of Family and Healthcare Services (formerly the Illinois Department of Public Aid) administer the Medicaid program in Illinois. Under Illinois law they assess community spouses, whose income exceeds the minimum monthly maintenance needs allowance ("MMMNA"), a portion of their income for the support of their institutionalized spouse. 305 ILCS 5/10 *et seq.* (DETERMINATION AND ENFORCEMENT OF SUPPORT RESPONSIBILITY OF RELATIVES) and 89 Ill. Admin.Code 120.103 (SUPPORT RESPONSIBILITY OF RELATIVES).

The state defendants claimed that the plaintiffs were required to exhaust administrative remedies, had failed to do so and therefore the plaintiffs were not properly before the court. These threshold and collateral issues were all resolved in favor of the plaintiff's at every level because the issue presented was a direct challenge to the agencies' authority to act and therefore was solely a question of law for the courts to decide.

B. The trial court decision.

The circuit court of Sangamon County, Illinois held for the plaintiffs and found, as a matter of law, that

the Medicare Catastrophic Coverage Act (the "MCCA"), 42 U.S.C. Section 1396r—5, and in particular Section (b)(1) thereof expressly prohibits the Defendants from seeking any support from a community spouse for any month in which the institutionalized spouse is receiving medical assistance ("Medicaid").

The trial court rejected the defendant's arguments 1) that Illinois was exempted because it was a so-called "209b" state; and 2) that support of a spouse is wholly separate from eligibility. The court held that federal law preempted state law under the supremacy clause and enjoined the defendants from seeking support from community spouses for any month the institutionalized spouse received Medicaid.

The trial court found that the MCCA was enacted by Congress to revise the Medicaid law and that it applied to all states and all Medicaid programs dealing with spouses of institutionalized spouses, citing *Wisconsin Department of Health and Family Services v. Blumer,* 534 U.S. 473, 122 S.Ct. 962, 151 L.Ed.2d 935 (2002). The court held that federal law controlled and the state was enjoined from seeking support from community spouses under 42 USC Section 1396r—5 (b)(1).

The trial court held that participating states are free to be more generous than federal law allows, but may not be more restrictive, even as a "209b" state,[1]

---

[1] "209b" status is accorded states participating in the Medicaid program from the beginning of the program; generally state law

because the MCCA expressly overruled any exception based upon "209b" status. The court held that the MCCA did not distinguish between eligibility and post-eligibility support because the act says "no income" in "any month."

Finally, the trial court held that the State cannot do indirectly what it is prohibited from doing directly. The defendants were enjoined from seeking any support from the plaintiffs as community spouses for any month in which the institutionalized spouse received Medicaid.

C. Illinois Appellate Court – Fourth District.

On appeal the Illinois Appellate Court reversed the trial court; one Justice dissented. (App. 52a). The appellate court recognized that the congressional intent is the "ultimate touchstone" of preemption analysis, but found that Congress did not preempt Illinois Law under any preemptive analysis –express, implied or conflict preemption.

The court recognized that Section (b)(1) "taken alone, seems to be a strict prohibition against making a community spouse's income available to the institutionalized spouse," but held that "when read

---

may be more generous than federal law but not more restrictive, however if rules and regulations more restrictive than federal Medicaid law were in place at the commencement of the supplemental security income program (January 1, 1972) the 209b status allows the state to enforce such existing rules and regulations. (42 U.S.C. Section 1396f)

within the context of the entire MCCA the language does not create any such prohibition." (App. 40a)

The appellate court limited the "context" of MCCA to eligibility only. The court further invested the word "deem" with a narrow meaning limited to purposes of determining eligibility relying on the pre-MCCA expression of Medicaid law in *Schweiker v. Gray Panthers*, 453 U.S. 34, 101 S.Ct. 2633, 69 L.Ed.2d 460 (1981).

Justice Knecht, in dissent, stated that he would affirm the trial court in that the state law requiring spousal support stands as an obstacle to the accomplishment and "execution of the full purposes and objectives of Congress exhibited by the MCCA to protect the income of a community spouse." He recognized the public policy considerations motivating the Illinois agencies' decision but reminded the majority that the courts are "charged with interpreting a statute as it is written" and that it is for the Congress to act if it is dissatisfied if a "limited number of community spouses take advantage of this policy." (App. 54a)

D. Illinois Supreme Court decision.

The Illinois Supreme Court granted leave to appeal the decision of the Appellate Court. The Illinois Supreme Court affirmed the Appellate court but employed a somewhat different analysis. The Court found that the decision required only an interpretation of the MCCA in light of Illinois spousal support law. The decision is dismissive of both the express and implied preemptive arguments and focused its analysis

on conflict preemption. Like the Appellate Court the Supreme Court narrowed the scope of the MCCA to eligibility.

The court read the MCCA as setting out "a mechanism of deeming and diversion to implement the MCCA's twin goals of ameliorating spousal impoverishment and 'preventing financially secure couples from obtaining Medicaid assistance,'" citing *Wisconsin Department of Health and Family Services v. Blumer* 534 U.S. 473, 122 S.Ct. 962, 151 L.Ed.2d 935 (2002).

The court recognized the statutory mechanism to divert income of the institutionalized spouse to the community spouse's income," and from that "diversion" mechanism justified the post-eligibility assessment of the income of certain community spouses under the State's spousal support laws. There is no such reverse mechanism provided for in the MCCA for diversion of income from the community spouse to the institutionalized spouse. The parallel mechanisms for diverting resources (assets) to a community spouse were also used to justify the use of post-eligibility support assessments. Finally, the court flatly stated that "eligibility determination does not include issues of ongoing spousal support owed to the state," and while "an institutionalized spouse's Medicaid eligibility may be redetermined each month, this is irrelevant to the community spouse's state-law obligation to pay spousal support when their community – spouse income exceeds the MMMNA, ("minimum monthly maintenance needs allowance". (App. 27a)

The court held that Illinois spousal support law is not preempted by the MCCA.

REASONS FOR GRANTING THE WRIT

The opinion and judgment sought to be reviewed are repugnant to express language of the MCCA, which expressly supersedes "any other provision" of the Medicaid subchapter "which is inconsistent" with it. (42 U.S.C. § 1396r—5(a)(1) The Act specifically references Sections 1396a(a)(17) and 1396f. Section (b)(1) states that no income of the community spouse shall be deemed available during any month in which an institutionalized spouse is in the institution.

The Illinois Supreme Court misread the decision of this Court in *Wisconsin Department of Health and Family Services v. Blumer,* 534 U.S. 473, 122 S.Ct. 962, 151 L.Ed.2d 935 (2002), interpreting the MCCA, wherein this court described as a "key provision" of the Act the protection of income for community spouse; "a key prohibition" of the MCCA was the "prohibition against deeming income of the community spouse available to the institutionalized spouse." *Blumer,* 534 U.S. at 492. Each of the petitioners is being denied the benefit and protection of the spousal impoverishment provisions of the MCCA, 42 U.S.C. Section 1396r—5, which enacted special rules for the treatment of the income of married persons when one is in an institution.

Illinois appears to be alone among all the states and jurisdictions participating in the Medicaid program in seeking to recover a portion of a community spouse's income for the support of an

institutionalized spouse. We find no other state or Medicaid jurisdiction that does so. Unless corrected the decision as it stands could be expected to result in other jurisdictions tailoring their rules to circumvent the plain protections provided for community spouses by the "rule of section (b)(1)." (*Blumer*, 534 U.S. at 473)

A. The Rule of Section (b)(1) is plain, express and unmistakeable.

The issue presented is one of statutory construction and congressional intent. Whether a state action is pre-empted by federal law is a question of congressional intent. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 95 L.Ed.2d 39, 107 S.Ct. 1549 (1987). It is a fundamental principle of the United States Constitution that the Congress has the power to preempt state law. *U.S. Const. art.VI, cl.2.* Express preemption is not required, but may be implied from a pervasive scheme of federal regulation or where compliance with both state and federal law is impossible. *Gade v. National Solid Wastes Management Ass'n* 505 U.S. 88, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992). The purpose of Congress is the ultimate touchstone. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985).

The first step in determining the proper construction of a statute is to examine the text itself. *Negonsott v. Samuels*, 507 U.S. 99, 104-105, 113 S.Ct. 1119, 122 L.Ed.2d 457 (1993). Thus we begin, as we must, with the plain words of the statute as enacted by the Congress:

> During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse. 42 U.S.C Section 1396r—5 (b)(1).

The MCCA was enacted with the express purpose of superseding all other provisions of the Medicaid title:

> (1) SUPERCEDES OTHER PROVISIONS— In determining the eligibility for medical assistance of an institutionalized spouse . . . the provisions of this section supersede any other provision of this title (including section 1396a(a)(17) and 1396(f) which is inconsistent with them. 42 U.S.C. Section 1396r—5(a).

Overruling section 1396f means that "209b" status is no safe harbor under the MCCA for any provision contrary to the MCCA. The supersession of section 1396a(a)(17) is very instructive. Section 1396a(a)(17) requires, *inter alia,* that Medicaid plans employ "reasonable standards," within standards prescribed by the Secretary, to not take into account the financial responsibility of any individual "unless such applicant or recipient is such individual's spouse . . . ." 42 U.S.C. Section 1396a(a)(17) "Financial responsibility" would surely include spousal support obligations. Thus when the MCCA superseded section 1396a(a)(17) it eliminated the provisions providing for spousal support; to continue to take into account the financial responsibility of a spouse is contrary to the provisions

of the MCCA in the special situation the petitioners found themselves in with their spouse institutionalized—and is to ignore the specific supersession of Section 1396a(a)(17) of Title XIX.

The federal Medicaid program provides funding to participating states to assist needy persons needing medical assistance. (42 U.S.C. Section 1396 *et seq.*) The administration of the plan by the State must conform to federal Medicaid law. *Schweiker v. Gray Panthers*, 453 U.S. 34, 101 S Ct. 2633, 69 L.Ed.2d 460 (1981). The MCCA was a major revision to the Medicaid statute enacted in 1988.

In *Wisconsin Department of Health and Family Services v. Blumer,* (2002) 534 U.S. 473, 122 S.Ct. 962 151 L.Ed.2d 935 this court explicated the history and purpose of the MCCA:

> Because spouses typically possess assets and income jointly and bear financial responsibility for each other, Medicaid eligibility determinations for married applicants have resisted simple solutions. See, e.g., id., at 44-48. Until 1989, the year the MCCA took effect, States generally considered the income of either spouse to be "available" to the other. We upheld this approach in *Gray Panthers*, observing that "from the beginning of the Medicaid program, Congress authorized States to presume spousal support." Id., at 44; see id., at 45 (quoting passage from S. Rep. No. 404, 89th Cong., 1st Sess., pt. 1, p. 78 (1965), including statement that "it is proper to expect spouses to support each other"). Similarly, assets held jointly by

the couple were commonly deemed "available" in full to the institutionalized spouse.

At the same time, States generally did not treat resources held individually by the community spouse as available to the institutionalized spouse. Accordingly, assets titled solely in the name of the community spouse often escaped consideration in determining the institutionalized spouse's Medicaid eligibility. See H. R. Rep. No. 100-105, pt. 2, pp. 66-67 (1987).

As Congress later found when it enacted the MCCA in 1988, these existing practices for determining a married applicant's income and resources produced unintended consequences. Many community spouses were left destitute by the drain on the couple's assets necessary to qualify the institutionalized spouse for Medicaid and by the diminution of the couple's income post-eligibility to reduce the amount payable by Medicaid for institutional care. See id., at 66-68. Conversely, couples with ample means could qualify for assistance when their assets were held solely in the community spouse's name.

In the MCCA, Congress sought to protect community spouses from "pauperization" while preventing financially secure couples from obtaining Medicaid assistance. See id., at 65 (bill seeks to "end the pauperization" of the community spouse "by assuring that the community spouse has a sufficient -- but not excessive -- amount of income and resources available"). To achieve this aim, Congress installed a set of intricate and interlocking

requirements with which States must comply in allocating a couple's income and resources.

Income allocation is governed by §§—5(b) and (d). Covering any month in which "an institutionalized spouse is in the institution," § 1396r—5(b)(1) provides that "no income of the community spouse shall be deemed available to the institutionalized spouse." The community spouse's income is thus preserved for that spouse and does not affect the determination whether the institutionalized spouse qualifies for Medicaid. In general, such income is also disregarded in calculating the amount Medicaid will pay for the institutionalized spouse's care after eligibility is established.

Other provisions specifically address income allocation in the period after the institutionalized spouse becomes Medicaid eligible. Section 1396r—5(b)(2)(A) prescribes, as a main rule, that if payment of income is made solely in the name of one spouse, that income is treated as available only to the named spouse (the "name-on-the-check" rule). *Wisconsin Dept. of Health and Family Services v. Blumer*, 534 U.S. 473, 479-481, 122 S.Ct. 962, 151 L.Ed.2d 935 (2002).

The language of the applicable section of the MCCA addressing treatment of income is explicit, express and does not admit of the interpretation given by the Illinois Supreme Court; the prohibition is broad and continuing:

> During *any* month in which an institutionalized spouse is in the institution... *no income* of the

> community spouse shall be *deemed* available to the institutionalized spouse. 42 U.S.C. § 1396r—5(b)(1). (Emphasis added).

In *Blumer* this Court recognized that, "[U]ntil 1989, the year the MCCA took effect, States generally considered the income of either spouse to be "available" to the other. We upheld this approach in *Gray Panthers*, observing "from the beginning of the Medicaid program, Congress authorized States to presume spousal support." (*Blumer*, 534 U.S. at 479) That was precisely the law the MCCA addressed and changed; to emphasize this key point we again refer to *Blumer*:

> In the MCCA, Congress sought to protect community spouses from "pauperization" while preventing financially secure couples from obtaining Medicaid assistance. ***To achieve this aim, Congress installed a set of intricate and interlocking requirements with which States must comply, in allocating a couple's income and resources.
>
> Income allocation is governed by §§ 1396r—5(b)(1) provides that "no income of Community Spouses shall be deemed available to the institutionalized spouse." *The community spouse's income is then preserved* for that spouse and does not affect the determination whether an institutionalized spouse qualifies for Medicaid. *In general, such income is also disregarded in calculating the amount Medicaid will pay for the institutionalized spouse's care after eligibility is established.* (534 U.S. 480-481) (Emphasis added).

Pre-MCCA Medicaid law "deemed" the income of a community spouse as available to the institutionalized spouse (*Gray Panthers*). An unintended consequence was that community spouses were often impoverished. (*Blumer,* 534 U.S. at 480) The purpose of the MCCA was to correct this situation and reverse the rule of law to provide that "no income" of the community spouse shall be "deemed available" for the care of the institutionalized spouse in any month in which the spouse is in the institution. 42 U.S.C. 1396r—5(b)(1). Notwithstanding that plain injunction the Illinois Supreme Court has held that income of the community spouse is not only deemed available but is actually available. Surely the Congress did not intend that the states accomplish by indirection what they are prohibited from doing directly. Had the Congress intended that any part of the income of the community spouse be available it would have been easy for the drafters to signal that intent by stating "no part of the income of the community spouse shall be deemed available to the institutionalized spouse during any month that the spouse is in the institution except for that income which exceeds the minimum monthly maintenance needs allowance established in part (d) of the Act."

The exception to the general rule of respecting the income of each spouse by the "name on the check" rule is the diversion of income *from* an institutional spouse *to* a community spouse under (d). The MCCA established a "minimum monthly maintenance needs allowance," or "MMMNA". (42 U.S.C. § 1396r—5 (d)(3). The MMMNA allows a diversion of income from an institutionalized spouse to the community spouse to insure at least 150% of federal poverty income level.

42 U.S.C. § 1396r—5 (d)(3)(A)-(B). In addition, a hearing procedure is provided to allow a couple to establish additional needs based upon "exceptional circumstances resulting in significant financial duress." 42 U.S.C. § 1396r—5 (e)(2)(B). This is a one-way avenue though.

The MCCA does *not* provide for any ceiling, spousal support, or mechanism to void any part of the blanket protection of all of a community spouse's income during any month the spouse is in the institution as provided by Section 1396r—5(b)(1). Significantly the MCCA does provide for a mechanism to recover excess resources from a community spouse. 42 U.S.C. 1396r—5 (c). Ironically the decision of the Illinois Supreme Court, if taken as restricting the MCCA to eligibility issues, would void the state's right to recover excess resources from a community spouse post-eligibility under the provisions of section (c). The better view and more rational conclusion is that the Illinois Supreme Court erroneously circumvented the express language of the MCCA by employing an analysis which severely truncates the MCCA to eligibility only. To do so it wrote out of the statute the words "any month" and "no income" as well as the numerous post eligibility references.

The treatment of a community spouse's income is only addressed in Section (b)(1) and the diversion mechanism provided for in Section (d) to supplement a community spouse's income by diverting income *from* the institutionalized spouse *to* the community spouse. There is no separate category in the MCCA for the treatment of a community spouse income when the income of the community spouse exceeds the minimum

monthly maintenance needs allowance. There is no diversion mechanism provided to divert any income *from* a community spouse *to* an institutionalized spouse. The imposition of spousal support orders by the state of Illinois is done without any reference to any diversion mechanism in the MCCA and without any hearing under the auspices of the MCCA to adjust the otherwise straightforward application of the Act to the facts presented by the couple seeking medical assistance.

Illinois assumes and the Illinois Supreme Court held that the MCCA applies only to the eligibility of an institutionalized spouse and that thereafter the state is free to treat with the community spouse's income as it will. This flies in the face of the MCCA as interpreted by this court in *Blumer* wherein this court held:

> This argument confuses the inclusion of a projected CSMIA in the pre-eligibility calculation of the community spouse's post-eligibility income with the actual transfer of income contemplated by the CSMIA provision. The (e)(2)(C) hearing is, again, simply a projection of the state of affairs that will exist post-eligibility. The theoretical incorporation of a CSMIA into the community spouse's future income at that hearing has no effect on the pre-eligibility allocation of the income between the spouses. A CSMIA becomes part of the community spouse's income only when it is in fact transferred to that spouse, 1396r—5(d)(1)(B), which may not occur until "after the institutionalized spouse is determined

> ... to be eligible." 1396r—5(d)(1). At that point, the actual CSMIA is deducted from the institutionalized spouse's income, *ibid*, and is no longer available for medical expenses. ***Thus, at all times the rule of subsection (b)(1) is honored, for at no time is any income of the community spouse simultaneously deemed available to the institutionalized spouse.*** *Wisconsin Dept. of Health and Family Services v. Blumer,* 534 U.S. 473, 493, 122 S.Ct. 962, 151 L.Ed.2d 935, 952 (2002). [Emphases added]

In *Mertz v. Houstoun,* 155 F. Supp. 2d 415 (E.D. Pa. 2001) and in *James ex rel. James v. Richman,* 465 F. Supp. 2d 395 (M.D. Pa. 2006) the lower federal courts, following this court in *Blumer,* recognized the explicit protection of the community spouse's income. In those cases resources of the community spouse were reconstituted under the MCCA as streams of income for the benefit of the community spouse to achieve Medicaid eligibility and to preserve the income for the community spouse under 42 U.S.C. 1396r – 5(b)(1). Judicial displeasure with the terms of the MCCA was no warrant to hold contrary to the provision of the MCCA. *See esp.* 465 F. Supp 2d at 404 and 155 F.2d at 427-428. Justice Knecht in his dissent in the Illinois Appellate Court correctly stated that it is for the Congress, not the courts, to change the policy it if offends the state's notion of public policy. (App.52a-54a). *Mertz* and *James* simply assume, as we believe this court did in *Blumer,* that Section (b)(1) of the MCCA means exactly what it says – "no income" of the community spouse is to be deemed available in "any month" for the care of the institutionalized spouse.

As expressed in *Blumer* the rule is unmistakably clear and plain—"no income," "during any month," "at all times," and "for at no time." We respectfully suggest that preemption could not be more clear than the language of (b)(1) and the express supersession of the financial responsibility of a spouse under 42 U.S.C. 1396a(a)(17). The "twin goals" of the MCCA are not an invitation for the courts to strike a balance between avoiding the "pauperization" of a community spouse and preventing financially secure couples from obtaining assistance. The Congress struck the balance by establishing limitations on the combined resources of a married couple, by formalizing the attribution of income and resources between the spouses (such as specifying ownership under what has become known as the "name on the check" rule), by expressly disallowing "deeming" of income and resources between spouses, by setting protections for community spouses whose income alone was inadequate to avoid pauperization, and then explicitly protecting post eligibility income [Section (b)(1)] **and** resources [Section (c)(4)] of community spouses.

B. Only "spousal refusal" cases give rise to lawful claims for spousal support under the MCCA.

The MCCA addresses income and resources separately. Income allocation is governed by 1396r—5(b) and (d). Resource allocation is governed by 1396r—5(c) and (f). In the income subsections, support rights are expressly prohibited. 42. U.S.C. §1396r—5(b). Congress does, however, in one of the resource subsections, allow for a spousal support right when at the time of initial eligibility determination,

the resources (i.e. non-exempt assets) exceed the amount allowed by the Community Spouse Resource Allowance ("CSRA"). 42 U.S.C. §1396r—5(c)(2) and (3). This exclusive spousal support right found in the MCCA is limited to this specific situation and applicable *only to excess resources* at the time of the initial eligibility determination—and as the cases show where the community spouse declines to disclose his or her financial information, i.e. the so called "spousal refusal" cases.[2]

In the decision sought to be appealed the court erroneously adopts the Department's claim that there are court cases authorizing support obligations from community spouse's income. Read carefully these cases are inapposite, and in fact, support the petitioner's position. Each of the so called "pay and chase" cases referred to by the lower courts deals with excessive resources. One presents the special case of imposing support rights when the community spouse has excess resources—this was expressly addressed in MCCA. See for example *Morenz v. Wilson-Coker* 321 F. Supp. 2d 398 (2004), *aff'd Morenz v. Wilson-Coker*, 415 F.3d 230 (2005); and, *Com'r of Dept. of Social Services of N.Y. v. Spellman*, 173 Misc.2d 979, 661 N.Y.S.2d 895 (1997). Those cases deal with the unique situation in which a support right is allowed by Congress to recover from excess *resources* of the community spouse where the community spouse

---

[2] We acknowledge that it appears that a method employed to recapture excess resources in these cases may have been assessing income of the community spouse, but that is not the situation here.

refuses to disclose her resources ("spousal refusal") and the institutionalized spouse assigns support rights. They do not uphold the right of states to bring claims for support against the income of a community spouse when the resources of the community spouse are within the CSRA ["community spouse resource allowance;" 42 U.S.C. 1396r—5(f)] . In the *Morenz* case, the resources were $157,500 in excess of the CSRA, and in the *Spellman* case the resources were $148,340.41 in excess of the CSRA. All published cases that allow for the state to bring an assigned support right are against the excess resources, not against the income of the community spouse. For a good introduction to the concept of "spousal refusal" see *Don't Want To Pay For Your Institutionalized Spouse? The Rule of Spousal Refusal and Medicaid in Funding Long-Term Care*, Andrew D. Wone, Vol. 14., No. 2 The Elder Law Journal, 485 (Univ. of Ill. College of Law).

C. Eligibility for medical assistance is monthly and the claim that the prohibition of 42 USC 1396r—5(a) applies only to eligibility is erroneous.

Eligibility for medical assistance of an institutionalized spouse is a "monthly" proposition:

> 89 Ill. Adm. Code 120.61 Cases in Intermediate Care, Skilled Nursing Care and DMHDD – MANG (AABD) and All Other Licensed Medical Facilities. . . . (b)(1) A one-month eligibility period will be used. All nonexempt income and nonexempt assets over the applicable asset disregard . . . shall be

applied toward the cost of care on a monthly basis.

The lower appeals courts erred in limiting the scope of MCCA to eligibility determinations. This misunderstanding seems to account in great part for the decision to reverse the trial court. Eligibility is on a monthly basis and includes the initial eligibility determination for the first month *and* any ongoing months of eligibility the client receives medical assistance. Subsequent months of eligibility are often referred to in the MCCA as "post-eligibility."

The introductory language of the MCCA is very important in that it makes explicit that the Congress intended to supersede all other provisions of TITLE XIX, the medical assistance title to the Social Security Law:

> (1) SUPERCEDES OTHER PROVISIONS.-- In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1)), the provisions of this section supersede any other provision of this title (including sections 1396a(a)(17) and 1396(f)) which is inconsistent with them. 42 U.S.C. §1396r—5(a) "Special Treatment for Institutionalized Spouses."

The phrase, "In determining the eligibility for medical assistance of an institutionalized spouse," does not mean that Congress intended to limit the MCCA to the initial determination of eligibility. The MCCA repeatedly addresses the post-initial eligibility period. Most of the provisions of the MCCA constitute post-

eligibility protection for the community spouse during the ongoing months of eligibility of the institutionalized spouse. See, for example, subsections (b)(1), (b)(2), (c)(4) and (d)(1).

To limit the rule of Section (b)(1) to eligibility only renders the reference to "any month" meaningless. We respectfully suggest that the Congress intended that the reach of the rule extend beyond eligibility and to *every* month in which a married couple suffers the institutionalization of a spouse who is qualified for medicaid assistance under the MCCA.

CONCLUSION

For the reasons set forth in this petition a writ of *certiorari* should be granted to review the decision of the Illinois Supreme Court.

Respectfully submitted,

DUANE D. YOUNG
Counsel of Record
IL ARDC No.: 3091457
DAWN D. BEHNKE
IL ARDC No.: 6255617
LaBARRE, YOUNG & BEHNKE
1300 South Eighth Street
Suite Two
Springfield, Illinois 62703
Telephone: (217) 544-8500
Facsimile: (217) 544-6200

Counsel for the Petitioners

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

Docket No. 104853

[Filed April 3, 2008]

ROBERT N. POINDEXTER *et al.*, Appellants,	)
v.	)
THE STATE OF ILLINOIS, Acting Through the Department of Human Services, *et al.*, Appellees.	)

JUSTICE FITZGERALD delivered the judgment of the court, with opinion.

Chief Justice Thomas and Justices Freeman, Kilbride, Garman, Karmeier, and Burke concurred in the judgment and opinion.

OPINION

This appeal arises out of the state's administrative efforts to recover from plaintiffs costs of their respective spouses' nursing home care. Rather than

exhausting administrative remedies, plaintiffs filed a suit for declaratory and injunctive relief in the circuit court of Sangamon County. They asserted that the state spousal support provisions (305 ILCS 5/10–1 through 10–28 (West 2006); 89 Ill. Adm. Code §103.10 *et seq.*) were preempted by the Medicare Catastrophic Coverage Act of 1988 (MCCA) (42 U.S.C. §1396r–5 (2000)). The circuit court found in favor of plaintiffs and enjoined the state from seeking spousal support. The appellate court reversed over a dissent. 372 Ill. App. 3d 1021. We granted plaintiffs leave to appeal (210 Ill. 2d R. 315(a)) and affirm the appellate court.

BACKGROUND

We first discuss the federal provision at issue, then the state provision that is allegedly in conflict with it, and then the specific procedural facts of this case.

A. Medicare Catastrophic Coverage Act

Medicaid is a cooperative federal-state program authorized under Title XIX of the Social Security Amendments of 1965 (42 U.S.C. §1396 *et seq.*). It provides medical services to both the categorically needy and the medically needy. *Hines v. Department of Public Aid*, 221 Ill. 2d 222, 227 (2006). Under prior law, a couple needed to deplete nearly all of their assets before either one could satisfy Medicaid eligibility requirements, leaving the spouse who remained in the community in a financially precarious position. H.R. Rep. No. 100–105, at 69 (1988), *reprinted in* 1988 U.S.C.C.A.N. 857, 892. In 1988, Congress attempted to fix the Medicaid system to prevent "spousal impoverishment." 42 U.S.C. §1396r–5

(2000); *Hines*, 221 Ill. 2d at 228. The MCCA provided a formula for allowing the institutionalization of one spouse, while keeping the spouse remaining in the community some distance from the poverty line. H.R. Rep. No. 100–105, at 69 (1988), *reprinted in* 1988 U.S.C.C.A.N. 857, 892.

Another goal of the MCCA was "preventing financially secure couples from obtaining Medicaid assistance." *Wisconsin Department of Health & Family Services v. Blumer*, 534 U.S. 473, 480, 151 L. Ed. 2d 935, 944, 122 S. Ct. 962, 967 (2002), citing H.R. Rep. No. 100–105, at 65 (1988), *reprinted in* 1988 U.S.C.C.A.N. 857, 888. The MCCA prevented an "institutionalized spouse" from qualifying for Medicaid by transferring his or her interest in assets to the "community spouse." See H.R. Rep. No. 100–105, at 73-74 (1988), *reprinted in* 1988 U.S.C.C.A.N. 857, 896-97; *Johnson v. Guhl*, 91 F. Supp. 2d 754, 761 (D. N.J. 2000) (with the MCCA, "Congress intended to close the loophole where a couple could shelter resources in the community spouse's name while the institutionalized spouse received Medicaid"). Therefore, the MCCA tried to balance two goals: "preventing impoverishment of the community spouse and ensuring that no one avoided contributing his or her fair amount to medical care." *Thomas v. Commissioner of the Division of Medical Assistance*, 425 Mass. 738, 740, 682 N.E.2d 874, 876 (1997).

To determine eligibility under these provisions, the state agency takes a "snapshot" of the couple's total current and forecasted resources and income as of the beginning of the first continuous period of institutionalization. See H.R. Rep. No. 100–105, at

73-74 (1988), *reprinted in* 1988 U.S.C.C.A.N. 857, 896-97; *Mistrick v. Division of Medical Assistance & Health Services*, 154 N.J. 158, 171, 712 A.2d 188, 195 (1998); 42 U.S.C. §1396r–5(c)(1)(A) (2000). Based on this snapshot, the agency attributes the couple's resources and income into spousal shares by a process of "deeming" and "diversion." See M. Farley, *When "I Do" Becomes "I Don't": Eliminating The Divorce Loophole to Medicaid Eligibility*, 9 Elder L.J. 27 (2001) (noting that the key provisions of the MCCA are the "deeming" and "diversion" provisions).

The MCCA's provisions consider both income and resources in determining an applicant's eligibility. *Blumer*, 534 U.S. at 481, 151 L. Ed. 2d at 944, 122 S. Ct. at 967. Under the income category, the institutionalized spouse's income cannot exceed the maximum level set by the state. However, the community spouse's income may not be "deemed available" to the institutionalized spouse in determining eligibility. 42 U.S.C. §1396r–5(b)(1) (2000). This is often called the "name-on-the-check" rule. *Blumer*, 534 U.S. at 481, 151 L. Ed. 2d at 944, 122 S. Ct. at 967. Under this rule, a community husband's income that he retains for himself will not, under state law, be counted against (or "deemed available" to) his institutionalized spouse at the eligibility phase of the Medicaid process. *Cf. Schweiker v. Gray Panthers*, 453 U.S. 34, 44, 69 L. Ed. 2d 460, 470, 101 S. Ct. 2633, 2640 (1981).

Next, the eligibility rules look at a couple's total resources. The state agency evaluates a couple's assets collectively, regardless of ownership. This collective evaluation of the couple's assets closed the loophole

that allowed the couple to shelter resources solely in the name of the community spouse. A couple's total resources must be below a certain statutorily prescribed level called the "Community Spouse Resource Allowance" (CSRA) before the institutionalized spouse will be eligible. If the total resources are above this limit, the couple must "spend down" to gain eligibility. *Houghton v. Reinertson*, 382 F.3d 1162, 1165 (10th Cir. 2004); 42 U.S.C. §1396r–5(c)(2) (2000).[1]

The CSRA also diverts some of the institutionalized spouse's resources where the community spouse has little of his or her own resources. This may occur in the common case of a spouse who spent his or her entire career working in the home. To avoid having to "spend down" the entirety of a couple's assets to qualify the institutionalized spouse for Medicaid and thus impoverish himself or herself in the process, the community spouse is allowed to keep the CSRA. 42 U.S.C. §1396r–5(f)(2) (2000). In other words, the state agency diverts some of the instititionalized spouse's assets to the community spouse to prevent spousal impoverishment. Conversely, if the community spouse

---

[1] All nonexcludable resources of both spouses over and above the CSRA are to be available to pay for nursing care costs of the institutionalized spouse. See 42 U.S.C. §§1396r–5(c)(1)(A), (c)(2) (2000). The remaining resources in excess of the community resource allowance are considered available to the institutionalized spouse, who will be ligible for Medicaid only if those remaining resources are less than or equal to $2,250.20 C.F.R. §416.1205 (2001). Any and all resources above the CSRA must then be spent before an institutionalized spouse will be eligible for medicaid.

retains most of the wealth, then his or her assets must be "spent down" only to the point of the CSRA.

The MCCA also provides diversion procedures regarding the couple's income to prevent spousal impoverishment. Once eligibility is reached, the state agency reexamines the ailing spouse's income to determine how much must be contributed toward nursing home costs and whether any of it should be left available to the community spouse. The institutionalized spouse is permitted to divert a portion of monthly income to the community spouse. This deduction from the institutionalized spouse's monthly income is known as the "community spouse monthly income allowance" (CSMIA). 42U.S.C. §1396r–5(d)(1)(B) (2000). If the community spouse's income falls below the "minimum monthly maintenance needs allowance" (MMMNA), the agency allocates a portion of the institutionalized spouse's income to the community spouse. 42 U.S.C. §1396r–5(d)(3) (2000).[2] Thus, if the name-on-the-check rule does not provide the community spouse with this measure of sufficient income, the agency must look to the institutionalized spouse's income to bring the community spouse's income up to the MMMNA. 42

---

[2] The MMMNA is calculated by multiplying the federal poverty level for a couple by a percentage set by the states. Since 1992, that percentage must be at least 150% (42 U.S.C. §§1396r–5(d)(3)(A), (d)(3)(B) (2000)), but the resulting MMMNA may not exceed $1,500 per month in 1988 dollars. 42 U.S.C. §§1396r–5(d)(3)(C), (g) (2000). At the time of litigation in this case, the Illinois MMMNA, called in Illinois the "Community Spouse Maintenance Needs Standard," was $2,378.

U.S.C. §1396r–5(d)(6) (added by Pub. L. No. 109–71, eff. February 8, 2006).

Finally, the MCCA provides a "fair hearing" procedure through which a couple may challenge the results of the state agency's "snapshot." At the fair hearing, also known as an "(e)(2)(C) hearing," the state agency can address any dissatisfaction with the CSRA and the MMMNA. 42 U.S.C. §1396r–5(e)(2)(C) (2000). For example, "[i]f the couple succeeds in obtaining a higher CSRA, the institutionalized spouse may reserve additional resources for posteligibility transfer to the community spouse. The enhanced CSRA will reduce the resources the statute deems available for the payment of medical expenses; accordingly, the institutionalized spouse will become eligible for Medicaid sooner." *Blumer*, 534 U.S. at 483-84, 151 L. Ed. 2d at 946, 122 S. Ct. at 969.

B. Spousal-Support Provisions

After the institutionalized spouse has received benefits, a state agency may seek recovery of nursing home costs from the community spouse. Other states refer to this as a "pay and chase" system. *Cf.* 372 Ill. App. 2d at 1034 (referring to Connecticut's system, whereby it cannot refuse Medicaid eligibility based on a couple's resources, but then must seek contribution from the community spouse). The State of Illinois' spousal support provisions are found in article X of the Illinois Public Aid Code (305 ILCS 5/10–1 through 10–28 (West 2006)). When one spouse receives Public Aid, the other spouse is liable to the agency providing the benefits. 305 ILCS 5/10–2 (West 2006). Section 10–11 of the Code provides that if the appropriate

state agency determines that a spouse owes support, the collections unit of that agency may issue an administrative order reflecting the amount owed to the state as reimbursement. 305 ILCS 5/10–11 (West 2006).

The regulations promulgated by the state provide that the Illinois Department of Human Services "shall seek to obtain support for recipients from legally responsible individuals and shall seek the enforcement of support obligations." 89 Ill. Adm. Code §103.10. However, "the Department shall not seek to obtain support for residents of long term care facilities if income of the spouse in the community is less than or equal to the" MMMNA. 89 Ill. Adm. Code §103.10. In other words, the state may only recover from a community spouse whatever monies that spouse may have in addition to the MMMNA. Above that limit, 1% per month of the community spouse's gross annual income earned above $7,000 will be assessed as responsible-relative liability. 89 Ill. Adm. Code §103.20(a)(2); §103, Table A. The responsible family member must submit a copy of his or her most recent federal income tax return for this determination; otherwise that person is held liable for the full amount of the assistance provided. 89 Ill. Adm. Code §103.20.

An administrative support order becomes "final" if the person receiving the order fails to timely seek an administrative hearing. 305 ILCS 5/10–12, 10–13 (West 2006). Review of administrative findings may be made pursuant to section 10–11 of the Public Aid Code (305 ILCS 5/10–11 (West 2006)), and final agency determinations can be challenged under the

Administrative Review Law (735 ILCS 5/3–102 (West 2006)).

C. Procedural History

The State of Illinois, acting through the Illinois Department of Public Aid (Public Aid) and the Illinois Department of Human Services (Human Services), administratively adjudged and sought spousal support from certain plaintiffs for their institutionalized spouses. Rather than proceeding with further administrative options, on July 22, 2004, plaintiffs Robert Poindexter, Mirl Whitaker, Maurice Hardy, Virginia McCulley, and Roger Meredith filed a complaint, in the circuit court of Sangamon County, for declaratory and injunctive relief against the state, Public Aid, Human Services, and the directors of the relevant state agencies (hereinafter, defendants).

Plaintiffs alleged that each plaintiff was the "community spouse" of an "institutionalized spouse" receiving medical assistance under the Medicaid program administered by the State of Illinois. Plaintiffs claimed that article X and its implementing regulations conflicted with the MCCA, and thus were preempted pursuant to the supremacy clause of the United States Constitution (U.S. Const., art. VI, cl. 2). The MCCA, according to plaintiffs, prohibited the collection of income from the community spouse after the eligibility determination. They principally cited section 1396r–5(b)(1), which provides as follows: "During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized

spouse." 42 U.S.C. §1396r–5(b)(1) (2000). According to plaintiffs, this section prohibits the state from seeking a contribution for the nursing home costs from the community spouse as long as the institutionalized spouse remained in the institution. Therefore, plaintiffs sought a declaration that Illinois' spousal support provisions, article X and its companion regulations, conflict with the MCCA and thus are preempted under the supremacy clause (U.S. Const., art. VI, cl. 2). Plaintiffs sought to permanently enjoin the defendants from undertaking any further collection efforts. They additionally asked for an order accounting for all the monies defendants had received from plaintiffs and requiring defendants to refund those sums, and to pay their litigation costs, expenses, and reasonable attorney fees.

Defendants filed a motion to dismiss under section 2–619(1) of the Code of Civil Procedure (735 ILCS 5/2–619(1) (West 2006)) based on plaintiffs' alleged failure to exhaust their administrative remedies as provided by the Public Aid Code and the Administrative Review Law. According to documents submitted by defendants to the trial court, plaintiff Poindexter had been issued an administrative order requiring him to pay $19,902 to reimburse Human Services for payments made on behalf of his wife. Human Services also issued Poindexter an ongoing assessment for her continued care of $1,210 a month. Poindexter did not seek a hearing from Human Services within the time provided by the Code. He also did not seek review of a subsequent order denying him a hearing because the request for a hearing he eventually made was untimely. Defendants also contended that plaintiffs Meredith and Hardy were

subject to administrative support orders, but they also failed to seek administrative hearings with Human Services to contest the orders. Defendants' documents further showed that plaintiff Whitaker refused to answer a subpoena directed to him by Human Services requesting information regarding his income. Plaintiff McCulley also failed to provide Human Services with requested information, although a Human Services local office had information that her income from an annuity, beginning in November 2003, exceeded $8,300 per month. The trial court denied the defendants' motion to dismiss.[3]

The original plaintiffs filed a motion entitled "Argument," which the trial court treated as a motion for summary judgment. In ruling in favor of plaintiffs, the trial court noted the MCCA makes it clear that income is attributable to the spouse to whom it is paid, *i.e.*, the "name-on-the-check" rule. Among other findings, the trial court stated:

> "[T]he MCCA does not distinguish between eligibility and post-eligibility support, it rather plainly states: 'During *any* month in which an institutionalized spouse is in the institution; except as provided in paragraph (2), *no income* of the community spouse shall be deemed

---

[3] The trial court later allowed motions to join by Orville Davis, Catherine Josephson, Margaret Gonet, and Mary Lou Dickens. They all alleged that they were community spouses of institutionalized spouses, that the issues were the same as those of the other plaintiffs, and that granting the motion would be in the interests of judicial economy. The record does not reveal that defendants filed a specific motion to dismiss as to these plaintiffs.

> available to the institutionalized spouse.' The MCCA expressly states that 'no income' of a community spouse may be deemed available to an institutionalized spouse in 'any month,' during which the institutionalized spouse receives medical assistance." (Emphases in original.)

The trial court enjoined defendants from seeking any support from community spouses for any month in which the institutionalized spouse is receiving Medicaid. It also ordered that the plaintiffs recover costs and expenses.

Defendants appealed, and the appellate court reversed. The appellate court first rejected the defendants' argument that plaintiffs failed to exhaust administrative remedies. The appellate court found that the issue raised was purely one of law and "is not an issue that falls within the particular expertise of an administrative agency, especially considering it involves the interpretation of a federal statute." 372 Ill. App. 3d at 1025. The court noted that unlike the situation presented in *Arvia v. Madigan*, 209 Ill. 2d 520 (2004), none of plaintiffs' claims are specifically required by statute to be brought before an administrative law judge. Further, following *Arvia*, plaintiffs' claims are purely constitutional and there are no factual disputes. 372 Ill. App. 3d at 1025-26.

Next, the appellate court addressed the preemption issue. The court examined the language of the MCCA and stated:

> "The introductory language of the MCCA clearly states that the provisions of the MCCA are for the purposes of determining Medicaid eligibility, which would not include issues involving ongoing spousal support. To read the subsection that states 'no income of the community spouse' that plaintiffs rely on as extending beyond the scope of an eligibility determination would essentially render the introductory language meaningless." 372 Ill. App. 3d at 1029.

The court also noted that the word "deem" is a term of art in the Medicaid context, used for purposes of determining eligibility. 372 Ill. App. 3d at 1029. Assets owned by each spouse are added together, and each spouse is "deemed" to own half, irrespective of any state's laws concerning community property. 372 Ill. App. 3d at 1029-30, citing *Schweiker*, 453 U.S. at 44-45, 69 L. Ed. 2d at 470, 101 S. Ct. at 2640-41. Since the MCCA clearly indicates that it is intended to apply to determinations of eligibility, the clause plaintiffs rely on, "no income of the community," is clearly only in relation to determinations of eligibility. 372 Ill. App. 3d at 1029. Justice Knecht dissented, stating, in part: "I agree with the trial court: the MCCA restricts the State from seeking support from the income of a community spouse, even if his or her income is more than the monthly needs allowance, for his or her 'institutionalized spouse' receiving Medicaid." 372 Ill. App. 3d at 1036 (Knecht, J., dissenting).

We granted leave to appeal (210 Ill. 2d R. 315(a)).

ANALYSIS

We address two issues: whether plaintiffs were required to exhaust administrative remedies before they sought declaratory and injunctive relief in circuit court; and whether the MCCA preempts state spousal support provisions.

I

We first address defendants' contention that plaintiffs' complaint for declaratory relief pursuant to the Illinois declaratory judgment statute (735 ILCS 5/2–701(a) (West 2006)) should be dismissed due to failure to exhaust administrative remedies.[4] Section 2–619 permits a dismissal after the trial court

---

[4] Plaintiffs initially challenge this argument by claiming that defendants were required to raise it in a cross-appeal. We disagree. Rule 318(a) (155 Ill. 2d R. 318(a)) provides that in all appeals "any appellee, respondent, or coparty may seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal." This court has invoked Rule 318(a) in finding that allowance of one party's petition for leave to appeal brings before this court the other party's requests for cross-relief. See *Heastie v. Roberts*, 226 Ill. 2d 515, 546 (2007); *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 242 (2006); *Weatherman v. Gary-Wheaton Bank of Fox Valley, N.A.*, 186 Ill. 2d 472, 490 (1999). We do note, however, that plaintiffs correctly point out that the cover of defendants' brief did not request cross-relief. Rule 315(h) provides: "If the brief of the appellee contains arguments in support of cross-relief, the cover of the brief shall be captioned: 'Brief of Appellee. Cross-Relief Requested.'" 210 Ill. 2d R. 315(h).

considers issues of law or easily proved issues of fact. 735 ILCS 5/2–619 (West 2006); *Czarobski v. Lata*, 227 Ill. 2d 364 (2008). The question on appeal is "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). Our review proceeds *de novo*. *Czarobski v. Lata*, 227 Ill. 2d at 369.

Defendants first argue that plaintiffs Poindexter, Meredith, and Hardy failed to exhaust administrative remedies, including failing to raise their constitutional claim at the administrative level. Defendants cite two statutes as affirmative matter to defeat the plaintiffs' complaint: (1) before filing suit, plaintiffs failed to exhaust their administrative remedies, as required by section 10–11 of the Public Aid Code (305 ILCS 5/10–11 (West 2006)); and (2) plaintiffs were required to file an administrative review complaint under the Administrative Review Law (735 ILCS 5/3–102 (West 2006)). Plaintiffs respond that this is a facial challenge to the statute, falling within a recognized exception to the exhaustion doctrine.

Courts apply the exhaustion doctrine to declaratory judgment actions. *Beahringer v. Page*, 204 Ill. 2d 363, 374 (2003). Generally, a party aggrieved by an administrative action must first pursue all available administrative remedies before resorting to the courts. *Canel v. Topinka*, 212 Ill. 2d 311, 320 (2004). The purpose of the exhaustion doctrine is to allow administrative bodies to develop a factual record and to permit them to apply the special expertise they possess. *Canel*, 212 Ill. 2d at 320-21. Exhaustion also

minimizes interruption of the administrative process. Moreover, the aggrieved party might succeed before the administrative body, obviating the need for judicial involvement, thereby conserving judicial resources. *Canel*, 212 Ill. 2d at 320-21. If a challenging party alleges that a facially valid statute has been applied in an arbitrary or discriminatory manner, "'the rule generally prevails that recourse must be had in the first instance to the appropriate administrative board.'" *Beahringer*, 204 Ill. 2d at 374, quoting *Bank of Lyons v. County of Cook*, 13 Ill. 2d 493, 495 (1958). The exhaustion doctrine also precludes review where the Administrative Review Law provides a remedy. *Canel*, 212 Ill. 2d at 321.

A party who challenges the validity of a statute on its face, however, is not required to exhaust administrative remedies. *Arvia*, 209 Ill. 2d at 532. "The reason for this exception is apparent: administrative review is confined to the proofs offered and the record created before the agency." *Arvia*, 209 Ill. 2d at 532-33. "A facial attack to the constitutionality of a statute, which presents purely legal questions, is not dependent for its assertion or its resolution on the administrative record." *Arvia*, 209 Ill. 2d at 533; see also *Canel*, 212 Ill. 2d at 321 ("An aggrieved party may seek judicial review of an administrative decision without complying with the exhaustion of remedies doctrine where a statute *** is attacked as unconstitutional on its face"); *Landfill, Inc. v. Pollution Control Board*, 74 Ill. 2d 541, 550 (1978) ("Exhaustion is not required where a statute or rule under which an administrative body purports to act is challenged as unauthorized, since the judicial determination will affect the jurisdiction of the

administrative body in all matters, not only in the instant circumstances"). Further, there is virtually no chance the aggrieved party will succeed before an agency where the issue is the agency's own assertion of authority. *Landfill*, 74 Ill. 2d at 550-51.

Here, we are asked to decide whether the MCCA preempts the spousal support law: a direct challenge to the authority of the defendants to act in this manner. There has been no allegation that the defendants misapplied the statute or regulation at issue or applied it in an arbitrary manner. The complaint alleges Illinois' provisions conflict with federal law in violation of the United States Constitution. Therefore, this matter falls squarely within an exception to the exhaustion requirement, and defendants' argument on this point is rejected.

We next reject defendants' argument that six of the other plaintiffs, Whitaker, McCulley, Davis, Josephson, Gonet, and Dickens, should have been dismissed because they had not yet received final administrative orders, citing *National Marine, Inc. v. Illinois Environmental Protection Agency*, 159 Ill. 2d 381 (1994). We first note that defendants never filed a motion to dismiss as to plaintiffs Whitaker, Davis, Josephson, Gonet, or Dickens. Nevertheless, even if defendants' motions as to those plaintiffs were not forfeited, we would reject it. In *National Marine*, we noted that in cases involving challenges to administrative actions, application of the ripeness doctrine prevents courts ""from entangling themselves in abstract disagreements over administrative policies"" and ""protect[s] the agencies from judicial interference until an administrative decision has been

formalized and its effects felt in a concrete way by the challenging parties.'" *National Marine*, 159 Ill. 2d at 388, quoting *Bio-Medical Laboratories, Inc. v. Trainor*, 68 Ill. 2d 540, 546 (1977), quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49, 18 L. Ed. 2d 681, 691, 87 S. Ct. 1507, 1515 (1967). There, the Illinois Environmental Protection Agency had issued a notice informing the plaintiff that it could be potentially liable for a "'release or a substantial threat of a release of a hazardous substance'" on the property pursuant to section 4(q) of the Act. *National Marine*, 159 Ill. 2d at 383, quoting Ill. Rev. Stat. 1991, ch. 111½, par. 1004(q). This court noted that the "complaint, in essence, sought to obtain judicial review of the Agency's issuance of the 4(q) notice prior to the Agency's initiation of cost-recovery/enforcement proceedings before the Pollution Control Board (Board) or the circuit court." *National Marine*, 159 Ill. 2d at 385. We found, "at this preliminary stage in the administrative process, it is not clear whether the Agency will even initiate a cost-recovery/enforcement proceeding against plaintiff before one of these bodies. Clearly, under the circumstances, plaintiff's complaint is premature."*National Marine*, 159 Ill. 2d at 390-91.

None of those considerations are present in this case. Both parties admit that there are no issues of fact and that an interpretation of the MCCA in light of the spousal support laws is all that is required. The monetary amounts have been determined and are not challenged by the community spouses. Unlike *National Marine*, in this case there are no abstract issues that this court faces. We therefore reject defendants' exhaustion argument and turn to consideration of whether article X is preempted by the MCCA.

II

As to the preemption issue, plaintiffs submitted to the trial court a brief entitled "Argument," which the defendants, the trial court and the appellate court treated as a motion for summary judgment. Because both parties agree that this case requires only an interpretation of the MCCA in light of Illinois' spousal support provisions, and admit that there are no issues of fact, we will do the same. Summary judgment is appropriate where the pleadings show that there is no genuine issue as to any material fact. 735 ILCS 5/2–1005(c) (West 2006). All cases involving summary judgment are reviewed *de novo*. *Sun Life Assurance Co. of Canada v. Manna*, 227 Ill. 2d 128 (2007); see also *Kinkel v. Cingular Wireless, LLC*, 223 Ill. 2d 1, 15 (2006) ("[w]hether state law is preempted by a federal statute is a question of law, subject to *de novo* review").

The supremacy clause of the United States Constitution provides that "[t]his Constitution, and the Laws of the United States *** shall be the supreme Law of the Land *** any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. "State law is preempted under the supremacy clause in three circumstances: (1) when the express language of a federal statute indicates an intent to preempt state law; (2) when the scope of a federal regulation is so pervasive that it implies an intent to occupy a field exclusively; and (3) when state law actually conflicts with federal law." *Village of Mundelein v. Wisconsin Central R.R.*, 227 Ill. 2d 281, 288 (2008), citing *English v. General Electric Co.*, 496 U.S. 72, 78-79, 110 L. Ed. 2d 65, 74, 110 S. Ct. 2270, 2275 (1990). The determination of whether state

law is preempted turns on the intent of Congress. *Village of Mundelein*, 227 Ill. 2d at 288, citing *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604, 115 L. Ed. 2d 532, 542, 111 S. Ct. 2476, 2481 (1991).

Here, although plaintiffs apparently contend that all three circumstances are present in this case, their arguments as to the first two circumstances amount to little more than one-sentence conclusions. See *In re Marriage of Bates*, 212 Ill. 2d 489, 517 (2004) ("A reviewing court is entitled to have issues clearly defined with relevant authority cited"). Rather, plaintiffs' argument centers on the third circumstance of preemption, whether the state law actually conflicts with federal law. Plaintiffs contend that MCCA section 1396r–5(b)(1) prohibits defendants from collecting spousal support under article X. Defendants argue that section 1396r–5(b)(1) applies only to eligibility determinations. They emphasize eligibility language throughout the MCCA, and also point out that the "deemed eligible" language contained in subsection (b)(1) applies only to eligibility determinations. We agree with defendants.

A careful review of the language of the MCCA reveals an absence of consideration of the spousal support laws of which plaintiffs complain. Rather, it sets out a mechanism of deeming and diversion to implement the MCCA's twin goals of ameliorating spousal impoverishment and "preventing financially secure couples from obtaining Medicaid assistance." *Blumer*, 534 U.S. at 480, 151 L. Ed. 2d at 944, 122 S. Ct. at 967, citing H.R. Rep. No. 100–105, at 65 (1988). To achieve this, Congress directed that the state

agency, in making its eligibility determination, take a "snapshot" of the couple's current and future resources to determine what income needed to be deemed to the institutionalized spouse and what income needed to be diverted to the community spouse. This is indicated in several ways.

We first examine the introductory section, subsection (a), which reveals it is aimed at determining "eligibility," as it states:

> "(a) Special treatment for institutionalized spouses
>
> (1) Supersedes other provisions
>
> *In determining the eligibility* for medical assistance of an institutionalized spouse *** the provisions of this section supersede any other provision of this subchapter *** which is inconsistent with them." (Emphasis added.) 42 U.S.C. §1396r–5(a)(1) (2000).

This indicates the statute concerns rules enabling institutionalization of an ailing spouse. Thus, the remainder of the statute is to be read with this eligibility determination in mind. Notably absent from this section is any language prohibiting a state from obtaining reimbursement of medical expenditures through spousal support laws.

Next, we note that the MCCA's provisions concerning "rules for treatment of income," found in subsection (b), relate to this eligibility determination. It contains two subsections: (b)(1), entitled "separate treatment of income"–the name-on-the-check

rule–which relates to deeming; and (b)(2), entitled "attribution of income," which relates to diversion.

The name-on-the-check rule properly assures that the Medicaid eligibility determination for the ailing spouse takes into account only income over which the ailing spouse has actual control. It provides:

> "(1) Separate Treatment of Income
>
> During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be *deemed available* to the institutionalized spouse." (Emphasis added.) 42 U.S.C. §1396r–5(b)(1) (2000).

This provision prevents the state agency from looking at a community spouse's income to prevent the receipt of benefits by an ailing spouse. Furthermore, this section of the statute does not reference spousal support laws in any way.

Moreover, this section–the name-on-the-check rule–uses a term of art, "deemed available," which points to eligibility determinations. The United States Supreme Court explained the genesis of this "deemed available" language, stating, "Until 1989, the year the MCCA took effect, States generally considered the income of either spouse to be 'available' to the other. We upheld this approach in *Gray Panthers*, observing that 'from the beginning of the Medicaid program, Congress authorized States to presume spousal support.'" *Blumer*, 534 U.S. at 479, 151 L. Ed. 2d at 944, 122 S. Ct. at 967, quoting S. Rep. No. 89–404, at

78 (1965), *reprinted in* 1965 U.S.C.C.A.N. 1943, 2018. The Court then described how the MCCA changed this determination after 1989–providing that a spouse's income shall *not* be deemed available to the other. It stated, referring to subsection (b)(1), "The community spouse's income is thus preserved for that spouse and does not affect the determination whether the institutionalized spouse qualifies for Medicaid. In general, such income is also disregarded in calculating the amount Medicaid will pay for the institutionalized spouse's care after eligibility is established." *Blumer*, 534 U.S. at 480-81, 151 L. Ed. 2d at 944, 122 S. Ct. at 967. Further, as the United States Supreme Court observed in *Blumer*, this "deemed available" language applied to the couple's resources as well. *Blumer*, 534 U.S. at 479-80, 151 L. Ed. 2d at 944, 122 S. Ct. at 967 ("Similarly, assets held jointly by the couple were commonly *deemed 'available'* in full to the institutionalized spouse" (emphasis added)). Accordingly, subsection (b)(1) must be construed in light of the MCCA mechanisms to avoid spousal impoverishment and prevent financially secure couples from receiving benefits. Indeed, our research reveals that prior courts have only construed this language in terms of its effect on the institutionalized spouse's eligibility. See, *e.g.*, *Arkansas Department of Health & Human Services v. Smith*, 370 Ark. 490, ___ S.W.3d ___ (2007); *In re Estate of Tomeck*, 8 N.Y.3d 724, 872 N.E.2d 236, 840 N.Y.S.2d 550 (2007); *King v. Secretary, Louisiana Department of Health & Hospitals*, 956 So. 2d 666 (La. App. 2007).

The next "rule for treatment of income," subsection (b)(2), provides guidance for "determining the income of an institutionalized spouse or community spouse for

purposes of the post-eligibility income determination described in subsection (d)." 42 U.S.C. §1396r–5(b)(2) (2000). The language of subsection (b)(2) is limited to attributing income between spouses to provide the income values needed in subsection (d) and was not directed to state spousal support laws. In turn, subsection (d) is entitled "Protecting income for community spouse" and refers to a procedure for raising an impoverished community spouse's income. 42 U.S.C. §1396r–5(d) (2000). Subsections (d)(1)(B), (d)(2), and (d)(3) provide for the allocation of available income from the institutionalized spouse to the community spouse to maintain a minimum monthly income, or MMMNA, when the community spouse's own income is below that level. 42 U.S.C. §1396r–5(d)(2) (2000). Subsection (2) defines the difference between the MMMNA and the community spouse's income as the "community spouse monthly income allowance." 42 U.S.C. §1396r–5(d)(2) (2000). The community spouse monthly income allowance, along with other allowances defined in subsection (d), is deducted from the institutionalized spouse's income before determining the amount of the institutionalized spouse's income, as determined in subsection (b), must be paid toward the costs of institutional care. Thus, Congress intended subsection (d) to prevent impoverishment of the community spouse by permitting income to be allocated to that spouse from the institutionalized spouse when necessary. This provision is not directed at spousal support laws such as article X, where the community spouse may be required to reimburse the state for some of the cost of care provided to the institutionalized spouse.

Finally, the remainder of the MCCA regarding the CSRA, MMMNA and the "fair hearing" is peppered with language referring to the eligibility determination when the agency takes its "snapshot." See 42 U.S.C. §§1396r–5(c)(1) ("Computation of spousal share at time of institutionalization"), 1396(c)(1)(A) ("There shall be computed [ ]as of the beginning of the first continuous period of institutionalization"), 1396r–5(c)(1)(B) ("At the request of an institutionalized spouse or community spouse, at the beginning of the first continuous period of institutionalization"), 1396r–5(c)(2) ("Attribution of resources at time of initial eligibility determination[.] *** In determining the resources of an institutionalized spouse at the time of application for benefits under this subchapter"), 1396r–5(d)(1) ("After an institutionalized spouse is determined or redetermined to be eligible for medical assistance"),1396r–5(e)(1)(A) ("a determination of eligibility"), 1396r–5(e)(2)(A) ("If either *** spouse is dissatisfied with a determination of"), 1396r–5(e)(2)(A) ("with respect to such determination if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse"). These provisions indicate that the MCCA is only concerned with "diversion" after eligibility has been determined. It makes no further provisions for the income of a community spouse which may be above the MMMNA, except to the extent that a community spouse may request a "fair hearing" to raise the MMMNA or CSRA.

Thus, the community spouse's income becomes an issue only when he or she does not receive sufficient income to cover the basic costs of living. In that case, he or she may seek, through a "fair hearing," a portion

of the institutionalized spouse's income to help defray necessary costs.[5] This accords with the purposes of the Act: to prevent impoverishment of the community spouse and to prevent financially secure couples from receiving benefits. As the court illustrated in *Blumer*,

> "Although that hearing is conducted preeligibility, its purpose is to anticipate the *posteligibility* financial situation of the couple. The procedure seeks to project what the community spouse's income *will be* when the institutionalized spouse becomes eligible. See Tr. of Oral Arg. 14 (officer conducting (e)(2)(c) hearing makes a calculation that 'concerns the post eligibility period'; question is will 'the at-home spouse ... have sufficient income in the post eligibility period, or does the resource allowance need to be jacked up in order to provide that additional income'). The hearing officer must measure that projected income against the MMMNA, a standard that, like the CSMIA, is operative only posteligibility." (Emphases in original.) *Blumer*, 534 U.S. at 491, 151 L. Ed. 2d at 951, 122 S. Ct. at 973.

Accordingly, while the MCCA addresses the posteligibility income of a potentially impoverished spouse, it says nothing about the state's ability to seek

---

[5] Plaintiffs do not argue that defendants' spousal support provisions threaten to impoverish them in violation of the MCCA. They further do not argue that they could potentially make use of this fair hearing mechanism in order to protect any of their income from defendants spousal support order.

reimbursement from an otherwise financially secure community spouse.

The plaintiffs further argue the appellate court improperly limited the MCCA to the first eligibility determination, pointing out that eligibility is an ongoing, monthly proposition. But the court did not do so; it merely stated that the eligibility determination does not include issues of ongoing spousal support owed to the state. 372 Ill. App. 3d at 1029. Nevertheless, although an institutionalized spouse's Medicaid eligibility may be redetermined each month, this is irrelevant to the community spouse's state-law obligation to pay spousal support when their community-spouse income exceeds the MMMNA.

We therefore find that the MCCA does not preempt article X of the Public Aid Code. Accordingly, the appellate court correctly reversed the trial court's grant of declaratory, injunctive, and other relief to the plaintiffs.

CONCLUSION

For the foregoing reasons, we find that plaintiffs were not required to exhaust administrative remedies and that the MCCA does not preempt article X of the Public Aid Code. Therefore, we affirm the judgment of the appellate court which reversed the trial court.

Affirmed.

APPENDIX B

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

NO. 4-05-0709

[Filed December 12, 2006]
Modified filed: May 17, 2007

ROBERT N. POINDEXTER, MIRL W. WHITAKER, MAURICE S. HARDY, VIRGINIA T. McCULLEY, ROGER O. MEREDITH, ORVILLE DAVIS, CATHERINE JOSEPHSON, MARGARET GONET, and MARY LOU DICKENS, Plaintiffs-Appellees,	)
v.	)
STATE OF ILLINOIS, Acting Through THE DEPARTMENT OF HUMAN SERVICES, CAROL ADAMS, Its Director; THE ILLINOIS DEPARTMENT OF PUBLIC AID, n/k/a THE ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES; and BARRY S. MARAM, Its Director, Defendants-Appellants,	)

Appeal from Circuit Court Sangamon County.
No. 04MR305
Honorable Leo J. Zappa, Jr., Judge Presiding.

MODIFIED UPON DENIAL OF REHEARING

JUSTICE MYERSCOUGH delivered the opinion of the court:

On May 3, 2005, the trial court issued a memorandum decision and judgment in favor of plaintiffs, which enjoined the Illinois Department of Public Aid (DPA) and the Illinois Department of Human Services (DHS) from seeking any support from the income plaintiffs earned while their spouses were in long-term-care facilities and receiving Medicaid. The State of Illinois, acting through DHS and DPA, appeals the court's order, arguing (1) plaintiffs failed to exhaust their administrative remedies, (2) plaintiffs forfeited their claims by failing to raise them before the administrative agency, and (3) the court erred in finding the Medicare Catastrophic Coverage Act of 1988 (MCCA) (42 U.S.C. §1396r-5 (2000)) preempted the spousal-support provisions of article X of the Illinois Public Aid Code (305 ILCS 5/10-1 through 10-27 (West 2004)). We reverse the trial court's decision with respect to the third issue regarding preemption and remand.

I. BACKGROUND

On July 22, 2004, the original plaintiffs (Robert N. Poindexter, Mirl W. Whitaker, Maurice S. Hardy, Virginia T. McCulley, and Roger O. Meredith), each of whom was a "community spouse" of an

"institutionalized spouse" as those terms are defined by the MCCA (42 U.S.C. §1396r-5(h) (2000)), filed a complaint for declaratory and injunctive relief against the State, arguing the State was illegally attempting to collect support from them for the support of their respective "institutionalized spouses" who were in long-term-care facilities and had received or were receiving medical assistance under the Medicaid program.

On August 23, 2004, the State moved to dismiss plaintiffs' complaint, alleging plaintiffs had not exhausted their administrative remedies before seeking judicial review. On October 25, 2004, the trial court denied defendant's motion to dismiss.

On January 24, 2005, Orville Davis, Catherine Josephson, and Margaret Gonet filed a motion, asking to join this action as plaintiffs. That same day, the original plaintiffs filed a motion titled "Argument," which was treated by the trial court as a motion for summary judgment. Plaintiffs argued the central issue in this case was whether the State could seek support from the "community spouse" of an "institutionalized spouse" in a long-term-care facility and receiving Medicaid. Under authority found in the Illinois Administrative Code (89 Ill. Adm. Code §103.10 (Conway Greene CD-ROM June 2003)), the State sought spousal support from a "community spouse's" income for the amount his or her income exceeded the minimum monthly maintenance needs allowance (monthly needs allowance) established by the MCCA (42 U.S.C. §1396r-5(d)(3) (2000)). Plaintiffs argued the State does not have the authority to do this pursuant to the MCCA.

On February 28, 2005, the trial court granted Davis, Josephson, and Gonet's motion to join the case as plaintiffs. On March 29, 2005, Mary Lou Dickens sought leave to join this case as a plaintiff. On May 3, 2005, the court issued its memorandum decision and judgment. In its findings of fact, the court stated the parties had agreed no genuine issues of material fact needed to be decided and the case should be decided on the pleadings. The court found federal law preempted state law governing the issue in this case. The court found pursuant to the MCCA a state is not allowed to seek spousal support from a community spouse's income after the institutionalized spouse has been declared eligible for Medicaid. In support of its finding, the court stated the MCCA does not distinguish between eligibility and posteligibility support. As a result, the court (1) found the State's support claims and collection efforts against the plaintiffs were wrongful and unlawful, (2) enjoined the State from seeking any support from the community spouses for any month in which his or her institutionalized spouse receives Medicaid, and (3) awarded plaintiffs their costs and expenses.

On May 6, 2005, the trial court allowed Dickens' motion to join the case as a plaintiff. On August 1, 2005, the trial court entered a Supreme Court Rule 304(a) (155 Ill. 2d R. 304(a)) finding regarding its orders of May 3 and May 6, 2005.

This appeal followed.

II. ANALYSIS

A. Exhaustion of Administrative Remedies

The State first argues the trial court should have dismissed plaintiffs' complaint because plaintiffs failed to exhaust their administrative remedies before bringing this claim before the trial court. Our supreme court has stated:

> "The exhaustion doctrine includes administrative review in the circuit court. [Citation.] Where the Administrative Review Law [citation] is applicable and provides a remedy, a circuit court may not redress a party's grievance through any other type of action. [Citation.] The circuit court's power to resolve factual and legal issues arising from an agency's decision must be exercised within its review of the agency's decision and not in a separate proceeding. [Citation.]
>
> This court has, however, recognized several exceptions to the doctrine of exhaustion of administrative remedies. [Citation.] An aggrieved party may seek judicial review of an administrative decision without complying with the exhaustion[-]of[-]remedies doctrine where a statute, ordinance[,] or rule is attacked as unconstitutional on its face. [Citation.] A party may also seek review where issues of fact are not presented and agency expertise is not involved. [Citation.] Moreover, exhaustion is not required if the administrative remedy is inadequate or futile or in instances where the litigant will be subjected to irreparable injury

> due to lengthy administrative procedures that fail to provide interim relief." *Canel v. Topinka*, 212 Ill. 2d 311, 321, 818 N.E.2d 311, 319 (2004).

Our supreme court has also held:

> "Exhaustion is not required where a statute or rule under which an administrative body purports to act is challenged as unauthorized, since the judicial determination will affect the jurisdiction of the administrative body in all matters, not only in the instant circumstances [citation].
>
> *** Where an agency's statutory authority to promulgate a rule and exercise jurisdiction is in issue, no questions of fact are involved. The agency's particular expertise is not implicated in statutory construction. Further, there is virtually no chance the aggrieved party will succeed before an agency where the issue is the agency's own assertion of authority." *Landfill, Inc. v. Pollution Control Board*, 74 Ill. 2d 541, 550-51, 387 N.E.2d 258, 260-61 (1978).

The trial court did not err in denying the State's motion to dismiss based on plaintiffs' alleged failure to exhaust their administrative remedies. The issue in this case is purely one of law. The parties agree no questions of fact are at issue. As a result, this is not an issue that falls within the particular expertise of an administrative agency, especially considering it involves the interpretation of a federal statute.

B. Forfeiture of Constitutional Claim

The State next argues plaintiffs forfeited their argument because they did not raise it before the administrative body. The State relies on our supreme court's decision in *Arvia v. Madigan*, 209 Ill. 2d 520, 809 N.E.2d 88 (2004).

In *Arvia*, the supreme court stated the general proposition "issues or defenses not raised before the administrative agency are deemed waived and cannot be raised for the first time on administrative review." *Arvia*, 209 Ill. 2d at 526, 809 N.E.2d at 93. According to the supreme court, this rule has been applied to constitutional issues, even though administrative agencies lack the authority to decide constitutional issues. *Arvia*, 209 Ill. 2d at 526, 809 N.E.2d at 93 ("As a general rule, issues or defenses not raised before the administrative agency are deemed waived and cannot be raised for the first time on administrative review. [Citation.] This rule has been applied to constitutional issues, even though the administrative agency lacks the authority to decide such issues. [Citation.]"). However, the court in *Arvia* refused to find that the plaintiffs in that case forfeited their claims. The court noted that raising constitutional issues before the agency is not a bright-line rule and that the court will not require it, stating, "Rather, we have held that it is 'advisable' to assert a constitutional challenge before the administrative tribunal" *Arvia*, 209 Ill. 2d at 527, 809 N.E.2d at 94.

The *Arvia* court made clear it was not deciding whether the rule applied in cases where a party seeks a separate declaratory action in circuit court, as

opposed to administrative review. *Arvia*, 209 Ill. 2d at 526, 809 N.E.2d at 93 ("Assuming, without deciding, that the same waiver rules apply where, as here, the litigant files a separate declaratory[-]judgment action, rather than a complaint for administrative review, we find no waiver under the facts of this case"). In *Arvia*, the plaintiff had a hearing in front of an administrative law judge, which resulted in an adverse ruling. The statute under which the plaintiff filed his claims expressly granted the administrative agency authority to review the specific claims the plaintiff raised. In addition to these claims, the plaintiff could have raised his constitutional claims as well but chose not to. Instead, the plaintiff raised these constitutional claims in a separate declaratory action filed in circuit court.

Unlike *Arvia*, none of plaintiffs' claims are explicitly required by statute to be brought before an administrative law judge, and plaintiffs' claims are purely constitutional. Moreover, neither DHS nor DPA, both of which are charged with administering the state's Medicaid program, would have the ability to decide plaintiffs' constitutional claims.

Furthermore, like plaintiffs' constitutional claims in *Arvia*, there was no factual dispute before the court. If factual issues were involved, an administrative hearing would have been the preferable forum for plaintiffs' claims, given an agency's particular expertise.

Finally, contrary to the State's assertion, plaintiffs are raising a facial challenge to article X of the Illinois Public Aid Code (Code) (305 ILCS 5/10-1 through 10-27

(West 2004)), because plaintiffs' argument insists that the law itself is unconstitutional based on federal preemption, which this court will discuss in more depth below. In *Arvia*, the court held that when mounting a facial challenge to a statute, administrative review is not required because the question is purely one of law not requiring an agency's particular expertise. We find because plaintiffs' only claims were constitutional and, therefore, outside the purview of the administrative agency, they did not forfeit their argument here.

C. Federal Preemption

The State argues the trial court erred in ruling in plaintiffs' favor, holding the spousal-support provisions of article X of the Code were preempted by the MCCA. According to the State, the MCCA does not preempt the State from trying to collect spousal support from a "community spouse" for the amount the "community spouse's" income exceeds the monthly needs allowance. However, plaintiffs argue the MCCA does preclude the State from diverting the "community spouse's" income to help pay for his or her "institutionalized spouse's" care.

This court must determine if, by enacting the MCCA, Congress intended to preempt the Code by rendering compliance with both the MCCA and the Code impossible. If Congress intended the MCCA to preempt state law, it could have done so expressly, by implication, or through a conflict between federal and state law, such that it would be impossible to comply with both. *Busch v. Graphic Color Corp.*, 169 Ill. 2d 325, 335, 662 N.E.2d 397, 403 (1996). Determining the

purpose of Congress is the "ultimate touchstone" of preemption analysis. *Weiland v. Telectronics Pacing Systems, Inc.*, 188 Ill. 2d 415, 417, 721 N.E.2d 1149, 1151 (1999). Moreover, courts begin with the basic assumption that Congress did not intend to displace state law. *Valstad v. Cipriano*, 357 Ill. App. 3d 905, 922-24, 828 N.E.2d 854, 872-73 (2005) (holding, *inter alia*, that the federal Clean Water Act did not preempt Illinois laws allowing the State to collect fees because Congress did not expressly prohibit it, the Act did not fully occupy the entire field of law regarding the regulation of pollution leaving no room for State action, and Illinois law did not conflict with the Clean Water Act rendering it impossible to comply with both).

The MCCA may preempt state law if Congress expresses a clear intent to supercede state law. However, nothing in the MCCA indicates that it intends to affect state law at all. See, *e.g.*, *Downhour v. Somani*, 85 F.3d 261, 266 (6th Cir. 1996) (noting Medicare contains no express preemption of state law). In *Downhour*, the court held that an Ohio prohibition on "balance billing" was not preempted by federal Medicare law that allowed the practice, since Congress did not express a wish for national uniformity on that subject. In enacting the MCCA, Congress has not expressly sought to preempt state law, nor does Congress express a desire for national uniformity in applying the provisions of the MCCA. Therefore, there is not express preemption of Illinois laws.

Another way in which Congress could have intended to preempt state law is by implication. If Congress passed the MCCA intending it to occupy the

entire field of Medicaid law, leaving no room for state regulation, then all overlapping state laws would be impliedly preempted. However, Congress intended Medicaid to be an example of "cooperative federalism," with both the federal and state governments setting policy. *Gillmore v. Illinois Department of Human Services*, 218 Ill. 2d 302, 304-06, 843 N.E.2d 336, 338 (2006). While states enjoy wide discretion in administering their Medicaid programs, this discretion is qualified with the mandate to adhere to applicable federal laws. *Gillmore*, 218 Ill. 2d at 305, 843 N.E.2d at 338; *Hines v. Department of Public Aid*, 221 Ill. 2d 222, 231, 850 N.E.2d 148, 153 (2006). In *Gillmore*, the Supreme Court of Illinois upheld an Illinois state law governing how a determination would be made regarding a person's attempt to shelter assets in order to be eligible to receive Medicaid. The court found that Illinois' requirement that any annuities be disbursed in equal payments, as opposed to a large balloon payment at the end of the annuity's term, was permissible under the Medicaid Act (Act) (42 U.S.C. §§1396 through 1396v (2000)). The court determined that the Illinois law, although more stringent than the federal guidelines of the Medicaid Act, still complied with the Act. The court reached the conclusion in *Gillmore* that the broad guidelines of the Act indicate that Congress clearly did not intend to foreclose states from supplementing federal Medicaid law. Since it is clear that in passing the MCCA Congress left room for state regulation in administering Medicaid, there is no implied preemption of Illinois law.

Therefore, the only way that the MCCA could preempt state law is if it is impossible to comply with both federal and state law or where the state law

stands as an obstacle to accomplishment and execution of the full purpose and intent of Congress. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-73, 147 L. Ed. 2d 352, 361, 120 S. Ct. 2288, 2294 (2000).

To discern the intent of Congress, this court will first evaluate the language of the pertinent sections of the MCCA. Then, this court will consider how the MCCA functions within the entire Medicaid statutory scheme as a whole, of which the MCCA is but one component. However, recognizing the opacity of Medicaid law, this court will also look further to congressional statements, prior decisions, and agency interpretations for guidance.

This court notes that Medicaid law is extremely complicated, and interpretation of its provisions is fraught with difficulty. *See Cherry v. Magnant*, 832 F. Supp. 1271, 1273 n.4 (S.D. Ind. 1993) (noting that these regulations have been characterized as "'almost unintelligible to the uninitiated'" (*Friedman v. Berger*, 547 F.2d 724, 727 n.7 (2nd Cir. 1976)) and an "'aggravated assault on the English language, resistance [sic] to attempts to understand it'" (*Friedman v. Berger*, 409 F. Supp. 1225, 1225-26 (S.D. N.Y. 1976))). Nonetheless, this court begins its analysis of the MCCA by observing the primary rule of statutory construction, which is to give effect to the intent of the legislature by looking at the plain language of the statute and giving that language its ordinary and commonly understood meaning. *Paris v. Feder*, 179 Ill. 2d 173, 177, 688 N.E.2d 137, 139 (1997). Then, we look to the whole statute, construing each provision with every other section of the statute. *Paris*, 179 Ill. 2d at 177, 688 N.E.2d at 139. If the

legislature's intent can be ascertained from the plain language of the statute, the legislature's intent must prevail. *Paris*, 179 Ill. 2d at 177, 688 N.E.2d at 139. If examining the language of the specific provisions of the statute within the context of the statute as a whole still fails to reveal congressional intent, the court may look to legislative history to discern intent. *Allstate Insurance Co. v. Menards, Inc.*, 202 Ill. 2d 586, 591, 782 N.E.2d 258, 261 (2002).

The Act begins, "*In determining the eligibility* for medical assistance *** the provisions of this section supersede any other provision of this subchapter." (Emphasis added.) 42 U.S.C. §1396r-5(a)(1) (2000). Plaintiffs point to the specific clause of the MCCA which states, "no income of the community spouse shall be deemed available to the institutionalized community spouse." 42 U.S.C. §1396r-5(b)(1) (2000). While this clause, taken alone, seems to be a strict prohibition against making a community spouse's income available to the institutionalized spouse, when read within the context of the entire MCCA, the language does not create such a prohibition.

To give full effect to the language Congress chose when enacting this clause, it is important to analyze it with regard to the overarching principles of the Act as a whole.

> "Courts should consider a statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it and avoiding constructions which would render any term meaningless or superfluous. [Citations.]

> Moreover, this court has a duty to construe a statute in a manner that upholds its validity and constitutionality if it reasonably can be done." *Fisher v. Waldrop*, 221 Ill. 2d 102, 112, 849 N.E.2d 334, 339-40 (2006).

The introductory language of the MCCA clearly states that the provisions of the MCCA are for the purposes of determining Medicaid eligibility, which would not include issues involving ongoing spousal support. To read the subsection that states "no income of the community spouse" that plaintiffs rely on as extending beyond the scope of an eligibility determination would essentially render the introductory language meaningless.

In this case, it is also important that the legislature used the word "deem" in the statute. "Deeming" is a term of art in the Medicaid context, used for purposes of determining eligibility. Assets owned by each spouse are added together, and each spouse is "deemed" to own half, irrespective of any state's laws concerning community property. 42 U.S.C. §1396r-5(b)(2)(A)(ii) (2000). Deeming income between spouses is part of the eligibility process. Since the MCCA clearly indicates that it is intended to apply to determinations of eligibility, the clause plaintiffs rely on, "no income of the community spouse shall be deemed available to the institutionalized spouse" (42 U.S.C. §139r-5(b)(l)(2) (2000)), is clearly only in relation to determinations of eligibility. Additionally, for income in both spouses' names, half is "deemed" available to each spouse. 42 U.S.C. §1396r-5(b)(2)(A)(ii) (2000).

In *Schweiker v. Gray Panthers*, 453 U.S. 34, 44-45, 69 L. Ed. 2d. 460, 470, 101 S. Ct. 2633, 2640-41 (1981), the United States Supreme Court addressed whether it was appropriate for Medicaid programs to "deem" income available between institutionalized and community spouses. The Court concluded that the Secretary of Health and Human Services' definition of "available" was entitled to legislative effect, and that "deeming" is consistent with the statutory language, the legislative history, and Congress's subsequent amendments. See also 305 ILCS 5/10-1 (West 2004) ("It is the intent of this Code that the financial aid and social welfare services herein provided supplement rather than supplant the primary and continuing obligation of the family unit for self-support to the fullest extent permitted by the resources available to it").

Moreover, the Supreme Court has previously recognized the tension between "deeming" procedures, which grant authority in the Secretary to place requirements on the states, and the states' individual family responsibility laws. "We have no doubt that some tension exists between the Secretary's congressionally authorized power under subsection [1396a(a)](17)(B) to determine what income is 'available' to the applicant and Congress' intent in subsection (17)(D) to permit the States to enforce their spousal responsibility policies." *Herweg v. Ray*, 455 U.S. 265, 276-77, 71 L. Ed. 2d 137, 147, 102 S. Ct. 1059, 1067 (1982).

Section 1396a(a)(17), like the MCCA, is concerned only with eligibility. The loosening of eligibility requirements for institutionalized spouses did nothing

to diminish the inherent tension between eligibility determinations and posteligibility recoupments. The MCCA changed the terms of section 1396a(a)(17) in only one crucial way: the state may not consider the income of a community spouse for determining the eligibility of an institutionalized spouse. The *Herweg* Court noted that the eligibility provisions of Medicaid law do not prohibit the state from seeking reimbursement under its family responsibility laws. See *Herweg*, 455 U.S. at 277 n.14, 71 L. Ed. 2d at 147 n.14, 102 S. Ct. at 1067 n.14.

The United States Supreme Court indicated that Medicaid eligibility provisions do not impact family responsibility laws, and when Congress amended those eligibility provisions, it was silent on family responsibility. When statutes are enacted after judicial opinions are published, it is presumed that the legislature acted with knowledge of the prevailing case law. *People v. Hickman*, 163 Ill. 2d 250, 262, 644 N.E.2d 1147, 1153 (1994). Otherwise, Congress would have rejected the Court's interpretation and declared that family responsibility laws are expressly preempted by Medicaid eligibility requirements. Congress did not upset the settled interpretation that Medicaid eligibility provisions do not affect state family responsibility laws. However, it is inaccurate to say that Congress left section 1396a(a)(17) intact. For the limited purpose of determining Medicaid eligibility, Congress expressly superceded section 1396a(a)(17).

Furthermore, in light of the overarching goals of Medicaid and existing precedent at the time the MCCA was enacted, it becomes apparent that the seemingly

definite language, "no income of the community spouse," was not meant as a barrier to spousal support. While the specific goal of Medicaid is to provide medical benefits for needy individuals, "'from the beginning of the Medicaid program, Congress authorized States to presume spousal support.'" *Wisconsin Department of Health & Family Services v. Blumer*, 534 U.S. 473, 479, 151 L. Ed. 2d 935, 944, 122 S. Ct. 962, 967 (2002), quoting *Schweiker*, 453 U.S. at 44, 69 L. Ed. 2d at 470, 101 S. Ct. at 2640 (also quoting the Congressional Record). According to the United States Supreme Court and the Congressional Record, the goal of the MCCA was to protect the community spouse from poverty, while protecting the Medicaid system from being abused by financially secure couples.

> "In the MCCA, Congress sought to protect community spouses from 'pauperization' while preventing financially secure couples from obtaining Medicaid assistance. See [H.R. Rep. No. 100-105, pt. 2 at 65 (1987), *reprinted in* 1988 U.S.C.C.A.N. 857, 888] (bill seeks to 'end th[e] pauperization' of the community spouse 'by assuring that the community spouse has a sufficient--but not excessive--amount of income and resources available')." *Blumer*, 534 U.S. at 480, 151 L. Ed. 2d at 944, 122 S. Ct. at 967.

Medicaid is not designed to supplant the traditional notions, enshrined in law and custom, that family members, particularly spouses and parents, have the responsibility to support their spouses and children.

"It thus is apparent that, from the beginning of the Medicaid program, Congress authorized States to presume spousal support. [Citation.]

The legislative history of this provision is fully consistent with its language. *** The Senate Report states in pertinent part:

'The committee believes it is proper to expect spouses to support each other and parents to be held accountable for the support of their minor children. . . . Such requirements for support may reasonably include the payment by such relative, if able, for medical care.'" *Schweiker*, 453 U.S. at 44-45, 69 L. Ed. 2d at 470, 101 S. Ct. at 2640-41, quoting S. Rep. No. 89-404, at 78 (1965), *reprinted in* 1965 U.S.C.C.A.N. 1943,

Although Medicaid is a state-administered federal program, to ensure the goals of the program are met, the federal government has imposed several requirements on states that choose to participate. *Gillmore v. Department of Human Services*, 354 Ill. App. 3d 497, 500, 822 N.E.2d 882, 885 (2004). First, Medicaid must be designed to be a "'payer of last resort.'" *Arkansas Department of Health & Human Services v. Ahlborn*, 547 U.S. __, __, 164 L. Ed. 2d 459, 478, 126 S. Ct. 1752, 1767 (2006), quoting S. Rep. No. 99-146, at 313 (1985), *reprinted in* 1986 U.S.C.C.A.N. 42, 279. Therefore, states must "take all reasonable measures to ascertain the legal liability of third parties *** to pay for care and services available under the plan." 42 U.S.C. §1396a(a)(25)(A) (2000). This is the basis of seeking reimbursement for Medicaid expenses from, for example, absent parents.

Second, as a condition of participation in Medicaid, participants must sign over their rights to support to the state. 42 U.S.C. §1396k(a)(1)(A) (2000). Thus, once a person chooses to participate in Medicaid, the state uses this right to support to pursue responsible third parties for reimbursement. In Illinois, the Department of Healthcare and Family Services (formerly Department of Public Aid) is charged with the responsibility of pursuing payments for child or spousal support. 305 ILCS 5/10-1, 10-2 (West 2004).

Third, the MCCA requires that the community spouse be provided a minimum allowance of assets and income in the event that all, or most, of the assets and income are in the name of the institutionalized spouse. 42 U.S.C. §1396r-5(d) (2000). This provision was specifically enacted to prevent a situation where all of the couple's income and assets would be "deemed" available to the institutionalized spouse, leaving the community spouse with nothing. See *Blumer*, 534 U.S. at 480, 151 L. Ed. 2d at 944, 122 S. Ct. at 967, noting H.R. Rep. No. 100-105, pt. 2, at 66-67 (1987) (Conf. Rep.), *reprinted in* 1988 U.S.C.C.A.N. 857, 889-90. In *Blumer*, the Court dealt with the specific provision of the MCCA pertaining to determining how to calculate a married couple's resources for purposes of determining the community-spouse resource allowance (CSRA). The dispute revolved around whether the CSRA should be calculated by taking into account only the community spouse's income alone--the "income-first" method--or after taking into consideration the contribution, if any, to the community spouse made from the income of the institutionalized spouse--the "resource-first" method. The Court in *Blumer* held that states could choose

between two methods of calculation when determining the minimum allowances of assets mandated by the MCCA. The Court noted that the MCCA allows states wide latitude when applying certain provisions of the MCCA and deferred to the Secretary's opinion that either method was an appropriate way for states to determine the CSRA.

The House Conference Report when enacting the MCCA provides further evidence that Congress was aware of existing state laws regarding spousal support at the time and did not intend for the MCCA to supercede these laws. The House report indicates that the House was aware that some states implemented their own spousal-contribution requirements in addition to the provisions of the Act. "However, some [s]tates do impose spousal contribution requirements in these circumstances." H.R. Rep. 100-105, pt. 2, at 66 (1987), *reprinted in* 1988 U.S.C.C.A.N. 857, 889.

The Department of Health and Human Services (HHS) is an additional source of guidance for interpreting Medicaid law. HHS oversees Medicaid law, and the United States Supreme Court has made it clear that an agency's interpretation of its own regulations deserves deference from the courts, especially when the area is technically complex.

> "We must give substantial deference to an agency's interpretation of its own regulations. [Citations.] Our task is not to decide which among several competing interpretations best serves the regulatory purpose. *** This broad deference is all the more warranted when, as here, the regulation concerns 'a complex and

> highly technical regulatory program,' in which the identification and classification of relevant 'criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns.' [Citation.]" *Thomas Jefferson University v. Shalala*, 512 U.S. 504, 512, 129 L. Ed. 2d 405, 415, 114 S. Ct. 2381, 2386-87 (1994).

The State Medicaid Manual, produced by the Centers for Medicare and Medicaid Services (CMMS) (formerly known as the Health Care Financing Administration), which has been delegated authority over Medicaid by the Secretary of Health and Human Services, provides important interpretation of Medicaid law to help states interpret the myriad provisions of federal law applicable to states.

> "We note that a guideline such as [the State Medicaid Manual], although not a statute or regulation, is entitled to deference by the courts as long as it is 'consistent with the plain language and purposes of the statute and if [it is] consistent with prior administrative views.' [Citation.]" *Gillmore*, 354 Ill. App. 3d at 501, 822 N.E.2d at 886.

"It is an official medium by which the [CMMS] issues mandatory, advisory, and optional Medicaid policies and procedures to the Medicaid State agencies." CMMS State Medicaid Manual Pub. 45-1. With respect to whether states can pursue support payments from community spouses, the State Medicaid Manual states that it is a matter of state law whether states can pursue community spouses.

> "Assigned Support Rights--Pending publication of regulations a reasonable definition is: An assignment of a support right allowing you to go against community spouses for reimbursement of some or all of the medical care provided to institutional spouses. You [the states] must assess your own State laws to determine what laws give rise to support rights and the amount of medical costs community spouses are asked to cover and whether you are limited to seeking support in the amount community spouses' resources exceed spousal allowances." CMMS State Medicaid Manual Pub. 45-3 §3260.1.

The CMMS manual makes it clear that the Secretary believes that the MCCA does not preempt state law. As discussed above, the courts have often deferred to the Secretary's opinion regarding the implementation of Medicaid statutes.

Finally, we look to other states' precedents in determining whether federal law preempts Illinois law. New York, for example, uses a program very similar to Illinois's to pursue income contributions from community spouses. Under New York law, the community spouse may simply refuse to contribute to the medical costs of the institutionalized spouse; however, the State can then recoup the costs from the community spouse that have been paid out by Medicaid for the institutionalized spouse's care. See 52A N.Y. Soc. Serv. Law §366(3)(a) (McKinney 2006); *In re Shah*, 95 N.Y.2d 148, 733 N.E.2d 1093 (2000); *Commissioner of Department of Social Services v. Spellman*, 173 Misc. 2d 979 (N.Y. 1997).

> "[T]he exercise of this right of 'spousal refusal' does not deprive the State of all opportunity to seek recoupment from a financially qualified community spouse. It just requires a reimbursement process to obtain resources from the community spouse after Medicaid benefits are paid, instead of an initial calculation stage that might limit the amount of Medicaid benefits to be provided." *Shah*, 95 N.Y.2d at 162, 733 N.E.2d at 1101.

In Connecticut, the federal district court characterized a similar provision that allowed the institutionalized spouse to assign his support rights to the state and then the community spouse to refuse to contribute as creating a "pay and chase" system, whereby the state cannot refuse Medicaid eligibility based on the couple's resources but then must seek contribution from the community spouse. *Morenz v. Wilson-Coker*, 321 F. Supp. 2d 398, 403, 407 (D. Conn. 2004) (holding that, although allowing a community spouse to refuse to contribute created a myriad of problems, including wasting scarce state resources pursuing reimbursement, the language of both the MCCA and Connecticut state law allowed such spousal refusal), *aff'd by Morenz v. Wilson-Coker*, 415 F.3d 230 (2d Cir. 2005). The Connecticut Attorney General also issued an opinion considering the legality of pursuing support from community spouses, concluding that it was legal so long as the law did not encroach on the minimum allowances prescribed by federal law for the community spouse. 1992 Op. Conn. Att'y Gen. 92-015 (1992) ("Given this historical perspective, MCCA's prohibition against the deeming of income availability to an institutionalized spouse does not affect a state's

authority to pursue recovery from community spouses not receiving a CSRA").

These cases have interpreted section 1396r-5(c)(3), which says, "The institutionalized spouse shall not be ineligible by reason of resources *** where *** the institutionalized spouse has assigned to the State any rights to support from the community spouse" (42 U.S.C. §1396r-5(c)(3) (2000)) as permitting a state right of spousal refusal. In each of these cases, a community spouse had resources above the limits allowed by the MCCA and simply refused to allow any resources to be used for the care of their spouse, as provided by state law. However, in each case, the courts found that it was permissible for the state to then pursue the community spouse for reimbursement under their state laws, which are similar to the Illinois laws at issue here.

The MCCA can be read in harmony with other Medicaid and state-law provisions calling for family responsibility. Such a reading is consistent with the dual purposes of the MCCA-- protecting community spouses from 'pauperization' while preventing financially secure couples from obtaining welfare assistance. Such a reading is also consistent with the overall purpose of Medicaid-- to provide for the needy and supplement but not supplant family responsibility.

We share the dissent's concern that this court must interpret statutes as written and leave questions of policy to be addressed by Congress. That is why in discerning whether preemption exists, we must look to Congress's intent. *Valstad*, 357 Ill. App.3d at 922, 828 N.E.2d at 872. Courts must begin with the

presumption that Congress did not intend to displace state law. *Valstad*, 357 Ill. App.3d at 922, 828 N.E.2d at 872. Then, the court must examine the federal law to determine whether the state law is expressly or impliedly preempted, or whether the state law directly conflicts with federal law. *Valstad*, 357 Ill. App. 3d at 922, 828 N.E.2d at 872. In this instance, Congress neither explicitly or impliedly preempted Illinois law, and Illinois law does not frustrate the execution of federal law. Therefore, this court must reverse the trial court's finding because Illinois law regarding family responsibility is not preempted by the MCCA.

III. CONCLUSION

Therefore, for the reasons above, we reverse the trial court's judgment.

Reversed.

TURNER, J., concurs.

KNECHT, J., dissents.

JUSTICE KNECHT, dissenting:

I would affirm because the trial court was correct in concluding the spousal-support provisions of article X of the Public Aid Code were preempted by the MCCA.

Congress's desire to preempt State law may be shown expressly, by implication, or through a conflict between federal and state law. *Busch*, 169 Ill. 2d at 335, 662 N.E.2d at 403. The United States Supreme Court has recognized:

> "[A] federal statute implicitly overrides state law either when the scope of a statute indicates that Congress intended federal law to occupy a field exclusively [citation], or when state law is in actual conflict with federal law. We have found implied conflict pre[]emption where it is 'impossible for a private party to comply with both state and federal requirements,' [citation], or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' [Citation.]" *Freightliner Corp. Myrick*, 514 U.S. 280, 287, 131 L. Ed. 2d 385, 392, 115 S. Ct. 1483, 1487 (1995).

In this case, the state law requiring a community spouse to use his or her income to support his or her institutionalized spouse in a long-term-care facility "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" exhibited by the MCCA to protect the *income* of a community spouse from being required for the support of his or her institutionalized spouse in a long-term-care facility.

I agree with the trial court: the MCCA restricts the State from seeking support from the income of a community spouse, even if his or her income is more than the monthly needs allowance, for his or her "institutionalized spouse" receiving Medicaid.

The State argues this is against the public policy because financially secure individuals with high incomes might never have to contribute any of their income to their "institutionalized spouse's" care. This

is a question of policy. We are charged with interpreting a statute as it is written. If some limited number of community spouses take advantage of this policy, then Congress can change the statute to avoid this result.

APPENDIX C

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS SANGAMON COUNTY, SPRINGFIELD, ILLINOIS

NO.: 2004-MR-305

[Filed May 3, 2005]

ROBERT N. POINDEXTER, MIRL W. WHITAKER, MAURICE S. HARDY, VIRGINIA T. McCULLEY, ROGER O. MEREDITH, ORVILLE DAVIS, CATHERINE JOSEPHSON and MARGARET GONET,	)
Plaintiffs,	)
-vs-	)
STATE OF ILLINOIS, acting through the ILLINOIS DEPARTMENT OF HUMAN SERVICES and CAROL ADAMS, its Director, and THE ILLINOIS DEPARTMENT OF PUBLIC AID and BARRY S. MARAM, its Director,	)
Defendants.	)

MEMORANDUM DECISION AND JUDGMENT

This cause having come on to be heard on the legal issues made by the pleadings and the parties having briefed the matter at length, having argued the issue and this Court being fully advised in the premises, STATES AND FINDS AS FOLLOWS:

DISCUSSION

Medicaid is a cooperative federal-state program that is funded in great part by the federal government and is administrated by the states to assist needy persons in receiving medical assistance in licensed institutions. States need not participate but if they elect to do so, they must abide by federal law with few exceptions (see 209b discussion below). Medicaid programs must be consistent with federal law.

A major revision to Medicaid law was passed by Congress in 1988 – the Medicare Catastrophic Coverage Act ("MCCA"). By MCCA, the Congress sought to maximize the income and assets of a couple to support the institutionalized spouse and to protect community spouses from pauperization. *Wisconsin Dept. of Health and Family Services v. Blumer* (2002) 534 U.S. 473, 122 S.Ct. 962, 151 L.Ed.2d 935. MCCA applies to all states and all Medicaid programs dealing with spouses of institutionalized spouses.

We, therefore, look to federal law for the answers to the issues raised.

FINDINGS OF FACT

1. The parties have agreed that there are no genuine issues of material fact to be decided and this case should be decided on the pleadings.

2. That each of the Plaintiffs is a community spouse (or was at the time of the claim made upon him or her) of an institutionalized spouse who was receiving medical assistance under the federal Medicaid program administered by the Defendant Departments.

3. That the State of Illinois seeks support from each of the Plaintiffs pursuant to regulation which appears at 89 Ill.Admin.Code section 103, *et seq*. which purports to be promulgated under 305 ILCS 5/10, *et seq*.

4. The Plaintiffs have brought this action to enjoin the collection of support from them citing overriding federal law.

5. That depriving the Plaintiffs of any portion of their monthly income which the Congress has found they need to avoid pauperization would cause irreparable harm, injury and damage for which the Plaintiffs have no adequate remedy at law.

6. Any sums wrongfully collected from any Plaintiff and paid to the state and, especially in view of issues surrounding sovereign immunity, therefore would be difficult if not impossible to recover, or would take years and an act of that legislation and the Court finds that no adequate legal remedy exists; monies, if

wrongfully exacted, from the income of the Plaintiffs as community spouses would cause them irreparable harm, and further that the sole issue raised is a question of law and for each of said reasons injunctive relief is appropriate and Plaintiffs have satisfied the requirements to obtain injunctive relief against the Defendants.

7. There are no issues of fact and judgment on the pleadings and as a matter of law is appropriate and dispositive of this case both *pendant lite* and finally.

8. The State seeks to collect support from community spouses after the institutionalized spouse is found eligible which it acknowledges it cannot do prior to the determination of eligibility.

CONCLUSIONS OF LAW

1. Medicaid is a joint federal/state program initiated in 1965 by the Congress is substantially funded by the federal government; states may but need not participate; Illinois has chosen to participate.

2. If a state chooses to participate in the Medicaid program, it must comply with federal law; a state is free to be more generous that federal law allows, but may not be more restrictive except under certain circumstances as a "209b" state.

3. Illinois is called "209b" state, but the Medicare Catastrophic Coverage Act ("MCCA") expressly overrules any contrary provisions of state Medicaid programs including 209b states.

4. Federal law has preempted state law governing the issues in this case under the supremacy clause.

5. The issue before the Court is whether a state can seek spousal support from a community spouse's income after MCCA; it cannot do so.

6. MCCA makes it clear that income is attributable to the spouse to whom it is paid, i.e., the "name on the check rule." 42 USC Section 1396r-5(b)(2).

7. MCCA expressly states that "no income" of a community spouse may be deemed available to an institutionalized spouse in "any month," during what the institutionalized spouse receives medical assistance [42 USC Section 1396r-5(b)(1)].

8. The Defendants claims that MCCA does not prohibit the State of Illinois from seeking spousal support after eligibility has been determined; two bases are urged in its support: 1) the states "209b" status, and 2) that support is wholly separate from eligibility.

9. As noted above, the 209b status is expressly overruled by MCCA; thus the only possible basis to permit the state to seek spousal support is its claim that it is wholly divorced from eligibility and therefore MCCA has application.

10. MCCA does not distinguish between eligibility and post-eligibility support rather plainly states:

> During *any* month in which an institutionalized spouse is in the institution; except as provided in paragraph (2), *no income* of the community spouse shall be deemed available to the institutionalized spouse. 42 USC 1396r-5(b)(1). (emphasis added).

11. The State cannot do indirectly what it is prohibited from doing directly.

12. The attempts of the Defendants to obtain support or reimbursement (in whole or in part) from community spouses of institutionalized spouses is unlawful and contrary to MCCA.

13. The Plaintiffs are, therefore, entitled to injunctive relief enjoining and prohibiting the Defendant Departments from pursuing spousal support from any of the Plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. That the support claims and collection efforts of the Defendant Departments is adjudged wrongful and unlawful;

B. That the Defendants are hereby enjoined from seeking any support from community spouses for any month in which the institutionalized spouse is receiving Medicaid; and,

C. That the Plaintiffs have and recover their costs and expenses in this matter.

ENTER: 5/3, 2005 /s/ Leo J. Zappa, Jr.
JUDGE

APPENDIX D

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

May 27, 2008

Mr. Duane D. Young
LaBarre, Young & Behnke
1300 South Eighth Street
Suite Two
Springfield, IL 62703

No. 104853 - Robert N. Poindexter et al., appellants, v. State of Illinois, etc., et al., appellees. Appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on July 1, 2008.

APPENDIX E

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

July 3, 2008

Mr. Duane D. Young
LaBarre, Young & Behnke
1300 South Eighth Street
Suite Two
Springfield, IL 62703

In re: Robert N. Poindexter et al., appellants, v. State of Illinois, etc., et al., appellees.
No. 104853

Today the following order was entered in the captioned case:

Appellant's suggestion of death and motion by appellant to substitute Gregory T. McCulley Independent Executor of the Estate of Virginia T. McCulley as party plaintiff, in the stead of Virginia T. McCulley, deceased. Motion Allowed.

Order entered by Justice Fitzgerald.

Very truly yours,

/s/ Juleanne Hornyak
Clerk of the Supreme Court

cc: Ms. Dawn D. Behnke
Mr. Carl Elitz
Mr. Michael A. Scodro